International Organization of Masters, Mates and Pilots, Marine Division, International Longshoremen's Association, AFL–CIO *and* Marine Transport Lines Company, Inc.; Keystone Shipping Company

International Organization of Masters, Mates and Pilots, Marine Division, International Longshoremen's Association, AFL–CIO *and* Maritime Overseas Corporation; Moore McCormack Bulk Transport, Inc. Cases 5–CB–4870, 5–CB–4885, 5–CB–4886, 5–CB–4887, and 5–CB–4907

January 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On March 21, 1986, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent[1] filed exceptions, a supporting brief, and an answering brief, and the General Counsel filed an answering brief.[2] Charging Party Marine Transport Lines Company, Inc. (MTL) filed cross-exceptions, a supporting brief, and answering briefs; Charging Party Keystone Shipping Company (Keystone) filed answering briefs; Charging Party Maritime Overseas Corporation (MOC) filed cross-exceptions and answering briefs; and Charging Party Moore McCormack Bulk Transport, Inc. (Mormac)[3] filed an answering brief. The Respondent, the General Counsel, and Charging Parties MTL, Keystone, MOC,[4] and Mormac, thereafter filed statements of position in response to the issuance on November 19, 1987, of the Board's notice to parties of opportunity to submit statements of position with respect to the issues raised by the Supreme Court's decision in *Royal Electric*.[5]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[6] and conclusions only to the extent consistent with this Decision and Order.

I. BACKGROUND

The Charging Party-Employers, MTL, Keystone, MOC, and Mormac (collectively the Charging Parties or Companies) are engaged in the business of transporting various products in United States-flag oceangoing vessels in foreign and interstate coastwise trade. This case does not involve statutory employees under Section 2(3) of the Act, but rather the Charging Parties' licensed deck officers—its masters, chief (or first) mates, second mates, and third mates—all of whom have been stipulated to be supervisors of their respective employers within the meaning of Section 2(11) of the Act.[7]

For many years, ranging in duration from 5 to 30, the Charging Parties have been parties to successive collective-bargaining agreements with the Respondent covering the licensed deck officers.[8] The agreements included provisions for the recognition of the Respondent as the collective-bargaining representative of the licensed deck officers, for the hiring of such officers exclusively from the Respondent's hiring hall, the use of which is limited to the Respondent's members, and a union-security provision requiring that officers maintain their union membership.

At various times after the most recent 1981–1984 contract expired in June 1984, the Charging Parties repudiated their collective-bargaining relationships with the Respondent and unilaterally established new terms and conditions of employment for the licensed deck officers. The Charging Parties informed the officers of the changes and offered them employment under the

[1] The Respondent, International Organization of Masters, Mates and Pilots, Marine Division, International Longshoremen's Association, AFL–CIO, is hereinafter referred to as ''the Respondent'' or ''MMP.''

[2] Although the caption of the General Counsel's answering brief does not so indicate, it also contains cross-exceptions to the judge's decision.

Pursuant to the General Counsel's request, we note the following incidental errors in the judge's decision: (1) in sec. II,E,3, a reference to picketing by ''MOC'' should have read ''MM&P''; (2) in sec. II,F, a reference to charges filed against ''the following employees'' of various employers should have read ''the following members employed by''; (3) in sec. II,F, a reference to mailgrams sent to the following employees should have read ''the following members of MM&P''; (4) in sec. II,F, a reference to David Erickson as a ''Keystone employee'' should have read ''Keystone supervisor''; and (5) in sec. II,I, a reference to ''a directive not to strike'' should have read ''a directive not to work.''

[3] ''Mormac'' is a collective reference for Moore McCormack Bulk Transport, Inc. and Gastrans, Inc., both separate Delaware corporations, which apparently do business together.

[4] Charging Party MOC also filed a motion to reopen the record for the limited purpose of introducing a collective-bargaining agreement between itself and the radio officers employed by MOC. Charging Party Keystone filed an affidavit in response to the motion to reopen the record, which states that if MOC's motion is granted, Keystone should also be permitted to introduce evidence concerning the responsibility of its licensed deck officers to adjust the grievances of radio officers employed aboard Keystone's tanker vessels. In its motion, MOC argues that the Board should permit it to introduce this additional evidence for the purpose of proving that MMP, through the American Radio Association, represents statutory employees of MOC. MOC states that it did not introduce this evidence at the hearing because pre-*Royal Electric (NLRB v. Electrical Workers IBEW Local 340*, 481 U.S. 573 (1987)), such evidence was irrelevant in resolving an alleged 8(b)(1)(B) violation. Because it is unnecessary for resolution of the issues in this case to find that MMP represents any of the Charging Parties' statutory employees, both motions are denied.

[5] *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, 481 U.S. 573 (1987).

[6] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[7] The Board has jurisdiction over the Respondent because it represents statutory employees of other employers not parties to this case, and thus is a labor organization within the meaning of Sec. 2(5) of the Act.

[8] The facts are more fully set forth in the judge's decision.

new terms and conditions, stressing that employment would be available only to those who accepted the new terms.

As set forth in greater detail supra, in response, on October 3, 1984,[9] the Respondent called a ''job action''[10] against the Charging Parties, instructing its member deck officers to refuse to perform work for the Charging Parties and to refuse to leave the vessels when replacements were hired. The Respondent also brought charges against and fined any licensed deck officer who continued to work for the Charging Parties after the job action was called, engaged in threatening conduct, and picketed the Charging Parties.[11]

The judge, applying then-existing Board law, concluded that the Respondent's job action and picketing violated Section 8(b)(1)(B)[12] because it deprived the Charging Parties of the services of their 8(b)(1)(B) representatives.[13] The judge further found that the charges, fines, and threats to fine officers to secure their participation in the job action and picketing violated Section 8(b)(1)(B), and further, that the threats and other violent conduct involving the Keystone vessel *Puerto Rican* and the MOC vessel *Juneau* violated both Section 8(b)(1)(A)[14] and Section 8(b)(1)(B).

II. ISSUES

After issuance of the judge's decision, the Supreme Court issued its decision in *Royal Electric*, requiring a substantial modification of the Board's approach in 8(b)(1)(B) cases. We must therefore examine the issues in this case in light of *Royal Electric*. The issues in this case are whether (1) the second and third mates are 8(b)(1)(B) representatives; (2) the strikes and/or picketing conducted by the Respondent violated Section 8(b)(1)(B); (3) the Respondent's fines and threats to fine certain of the licensed deck officers violated Section 8(b)(1)(B); and (4) the threats of violence related to the incidents involving the *Juneau* and *Puerto Rican* vessels violated Section 8(b)(1)(A) and (B) of the Act.

For the reasons set forth below, we find that, under *Royal Electric*, the second and third mates are not 8(b)(1)(B) representatives. We also find that the Respondent violated Section 8(b)(1)(B) by striking and picketing the Charging Parties to force them to replace, and/or to prevent them from hiring, masters and chief mates of their own choosing, and by threatening to fine, bringing internal union charges against, and fining the Charging Parties' masters and chief mates; and that the Respondent violated Section 8(b)(1)(A) by threatening violence against the crew of the Keystone vessel the *Puerto Rican*.

III. ANALYSIS AND CONCLUSIONS

A. *The Status of Second and Third Mates*

The parties stipulated that the licensed deck officers—the masters, the chief (or first) mates, the second mates, and the third mates—are supervisors within the meaning of Section 2(11) of the Act. The parties also stipulated that the masters and chief mates are 8(b)(1)(B) representatives, but disagreed as to the status of the second and third mates.

In concluding that the second and third mates are also 8(b)(1)(B) representatives, the judge relied on the reservoir doctrine, under which the Board did not require proof that a supervisor has 8(b)(1)(B) functions in order to find status as an 8(b)(1)(B) representative. Rather, under the Board's reservoir doctrine, the Board interpreted the term ''representative for the purpose of collective bargaining or the adjustment of grievances'' broadly so as to include all individuals who were supervisors within the meaning of Section 2(11) on the theory that such individuals formed the logical ''reservoir'' from which the employer was likely to select his representatives for collective bargaining or grievance adjustment.[15] In addition to relying on the reservoir doctrine, the judge also found that the second and third mates actually adjust grievances. The judge concluded that although many of the instances involve no more than supervision, ''there is some grievance adjustment present, albeit minor and personal, rather than contractual.''[16]

The Supreme Court in *Royal Electric* explicitly rejected the reservoir doctrine, finding that Section 8(b)(1)(B) protects only those individuals who actually perform grievance adjustment or collective-bargaining duties, rather than all supervisors.[17] The Court concluded that in order to find an 8(b)(1)(B) violation, a supervisor must actually possess grievance adjustment or collective-bargaining responsibilities, and that simply the possibility that a supervisor may someday per-

[9] All dates refer to 1984 unless otherwise noted.

[10] We agree with the judge's use of the term ''strike'' synonymously with ''job action,'' and use the terms interchangeably herein.

[11] The picketing continued until enjoined by a consent 10(j) injunction on January 15, 1985.

[12] Sec. 8(b)(1)(B) provides that it shall be an unfair labor practice for a labor organization to restrain or coerce an employer ''in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.''

[13] The judge found that the second and third mates were 8(b)(1)(B) representatives. The parties had stipulated that the masters and chief mates were 8(b)(1)(B) representatives.

[14] Sec. 8(b)(1)(A) provides that it shall be an unfair labor practice for a labor organization to restrain or coerce employees in the exercise of their Sec. 7 rights.

[15] *Electrical Workers IBEW Local 340 (Hulse Electric)*, 273 NLRB 428, 439 (1984).

[16] Some of the examples of grievances noted by the judge involved complaints that a seaman who was standing watch was not carrying his full share of the duties; that a seaman was not relieved on time or did not receive his proper coffee or meal break; that a seaman should perform a particular task; and that another crew did not make coffee or left the quarters dirty.

[17] 481 U.S. at 586.

form 8(b)(1)(B) functions is insufficient to support a finding of 8(b)(1)(B) status.[18]

Thus, an examination of a supervisor's actual authority and conduct is necessary to determine whether the individual is an 8(b)(1)(B) representative.[19] After conducting a thorough review of the responsibilities of the second and third mates contained in the record, we find that the General Counsel has not met his burden of demonstrating sufficient evidence to support a conclusion that the second and third mates are 8(b)(1)(B) representatives.

As the judge recognized, the instances he cited in support of his 8(b)(1)(B) finding involve no more than examples of the exercise of supervisory authority, rather than grievance adjustment.[20] While the failure to follow a supervisor's order might cause a grievance to arise, the exercise of supervisory authority by itself does not constitute grievance handling.[21] The examples cited by the judge and contained in the record consist primarily of the adjustment of routine work assignment or coffeebreak complaints, and merely constitute the resolution of daily supervisory problems. Although the judge is correct that 8(b)(1)(B) status does not always require participation in a formalized grievance system,[22] the resolution of routine personal problems of the type present here do not rise to the level of grievance adjustment necessary to confer 8(b)(1)(B) status on an employer's representative.[23] In addition, unlike certain situations where the Board has relied on the fact that an individual is the only available employer representative at a jobsite to adjust grievances if and when they arise to support a finding of 8(b)(1)(B) status,[24] in the present case, there is generally always a master and/or chief mate aboard the vessel to adjust grievances.[25]

In making this finding, we recognize that the grievance procedures provided by the collective-bargaining agreements between the Charging Parties and the National Maritime Union (NMU) and the Seamen's International Union (SIU), the two unions which represent the unlicensed seamen aboard the vessels, require as a first step the presentation of the complaint to the unlicensed seaman's ''immediate superior'' or ''superior officer,'' who is the watch officer. Other than one discussion between a second or third mate and a union representative from one of the unlicensed seamen's unions regarding whether the collective-bargaining agreement governed the problem (it did not), however, the record does not contain any evidence that a grievance was ever filed with a second or third mate.

On the other hand, the record contains evidence that grievances are generally resolved either by the chief mate or the master of the vessel. There was testimony presented by Jeffrey Miller, master of Keystone's vessel *Chilbar*, that a junior officer (second or third mate) is not the one who adjusts or resolves grievances, but is sometimes present during the resolution of the grievance by a chief mate and/or master to give factual input as to what he may have observed on his watch. Thus, although the unlicensed seamen's contracts require as a first step the presentation of the grievance to the watch officer (second or third mate), the evidence supports the conclusion that the parties have not followed this procedure, and that, in fact, the grievance is apparently first presented either to the master or the chief mate.

For these reasons, we find that the General Counsel has failed to establish that the second and third mates have grievance adjustment authority, and we accordingly find that they are not 8(b)(1)(B) representatives.

B. *The Job Action and Picketing*

On October 3 the Respondent's president, Robert Lowen, sent telexes to all the Charging Parties' vessels instructing the Respondent's members to cease all work of any kind immediately except for that involving the security of the vessels, and to remain on board to protect their jobs. Describing its actions as a ''job action,'' the Respondent contended that it was ''necessary to protect wages and benefits of not only MMP&P members but ultimately those of all officers and crew members. . . . This action is necessary to preserve your future.''[26]

[18] 481 U.S. at 588–589. See also *Carpenters District Council of Dayton (Concourse Construction)*, 296 NLRB 492 (1989).

[19] *Operating Engineers Local 3 (Kasler Corp.)*, 298 NLRB 215 (1990).

[20] There is no contention, nor is there any evidence, that the second and third mates possess collective-bargaining authority.

[21] The record contains several examples of the second or third mates' exercise of supervisory authority through their conduct in ordering an intoxicated unlicensed seaman to leave his post. Such an order by a second or third mate may lead to the filing of a grievance at which the second or third mate will have to present his version of what happened. The grievance, however, is resolved by the master or chief mate.

[22] In *Operating Engineers Local 101 (St. Louis Bridge)*, 297 NLRB 485 (1989), the Board found Supervisor Tessmer to be an 8(b)(1)(B) representative. Although the disputes he resolved (employee wage and hour disputes) were technically not contractual grievances, this was only because there was no collective-bargaining agreement in effect at that jobsite. Tessmer, however, adjusted the types of employee disputes that would most likely be contractual grievances under any collective-bargaining agreement. Further, Tessmer was the only onsite supervisor who was available to adjust any such grievance that might arise.

[23] See *Kasler Corp*., supra (in which the Board found that Butterfield's possession of minimal authority was insufficient to establish that he was an 8(b)(1)(B) representative); *Birmingham Printing Pressmen's Local 55 (Birmingham News)*, 300 NLRB 1 (1990) (in which the Board found that Freeman was not an 8(b)(1)(B) representative where no evidence was presented that Freeman ever adjusted a grievance); *Royal Electric*, 481 U.S. at 588–589 fn. 12 (in which the Court stated that the term ''grievance adjustment'' is a ''particular and explicitly stated activity'').

[24] *St. Louis Bridge*, supra.

[25] The record contains evidence that when a vessel is in port, a second or third mate may be the only deck officer on the vessel. When the master and chief mate leave a vessel, however, it generally is only for a short period of time, e.g., to get a haircut.

[26] The Respondent later told its members that if they were on a foreign trip, they had a right to insist on proper discharge before a U.S. Coast Guard or consular officer. If in a U.S. port, the officers were not to leave the vessel

Prior to the issuance of the October 3 directive by Lowen, port captains and other company representatives scurried from ship to ship to offer licensed deck officers continued employment under the Companies' new wage and benefit packages, which provided on most vessels for, inter alia, reduced wages and vacation benefits, and the elimination of one position of third mate (where a vessel had two third mates) and a relief chief mate in port. Those officers who refused to accept the Companies' new wage and benefit package were discharged. Before October 3, the officers generally agreed to remain on the vessels, but once Lowen issued the October 3 directive, the officers refused to perform any work and refused to leave their vessels voluntarily, even though in many instances relief crews had been hired and were available to assume the officers' duties.[27]

The judge found that the objectives of the job action were to replace the licensed deck officers hired by the Charging Parties as replacements with the officers affiliated with the Respondent; to gain recognition from the Charging Parties as the representative of the officers; to obtain a collective-bargaining agreement; and to obtain adherence to the area's labor standards. Relying on Board law enforced by three circuit courts,[28] the judge found that all four of the Respondent's objectives violated Section 8(b)(1)(B). The judge further found that the picketing, which began at approximately the same time as the job action and which continued until a consent 10(j) injunction was entered, had the same unlawful objectives as the job action, and therefore also violated Section 8(b)(1)(B) of the Act.[29]

We agree with the judge, for the reasons set forth by him, that the record clearly establishes that one of the objects of the job action and picketing was to replace the licensed deck officers hired by the Charging Parties with those officer members of the Respondent.[30] For the reasons set forth below, we find that, based solely on this replacement object of its job action and picketing, the Respondent by this conduct violated Section 8(b)(1)(B).

Section 8(b)(1)(B) was intended primarily to prevent a union engaged in a long-term relationship with an employer from dictating the latter's choice of collective-bargaining or grievance representatives or the form that such representation would take.[31] In *Royal Electric*, the Supreme Court carefully defined the prerequisites necessary for a finding that a union violated Section 8(b)(1)(B), and concluded that in order for such a violation to occur, a supervisor must actually possess grievance adjustment or collective-bargaining responsibilities, and a union must either have or be seeking a collective-bargaining relationship with an employer. With respect to the second prong of this test, the Supreme Court stated that ''[d]irect coercion of an employer's selection of a Section 8(b)(1)(B) representative would always be a Section 8(b)(1)(B) violation, whether or not the union has or seeks a bargaining relationship with an employer.''[32]

Because the parties have stipulated that the masters and chief mates are 8(b)(1)(B) representatives, and we have found an object of the job action and picketing was to force the Charging Parties to discharge the masters and chief mates they hired as replacements and to hire the Respondent's member officers instead, the job action and picketing clearly constitute ''direct coercion'' of the Charging Parties' selection of 8(b)(1)(B) representatives and, as such, violate the restrictions of that section.[33] We therefore find that the Respondent, in striking and picketing the Charging Parties to force them to replace their masters and chief mates, and/or to prevent them from hiring masters and chief mates

unless forced off by a U.S. marshal or other credentialed officer armed with proper documents.

[27] The judge's decision describes in great detail the circumstances surrounding the job action and picketing on the various vessels of the Charging Parties, and we will not attempt to repeat the facts here. We adopt all the judge's factual findings related to the job action and picketing, as they accurately portray the record testimony.

[28] *Masters, Mates & Pilots (Marine & Marketing)*, 197 NLRB 400 (1972), enfd. 486 F.2d 1271 (D.C. Cir. 1973), cert. denied 416 U.S. 956 (1974); *Masters, Mates & Pilots (Westchester Marine)*, 219 NLRB 26 (1975), enfd. 539 F.2d 554 (5th Cir. 1976); *Masters, Mates & Pilots (Cove Tankers)*, 224 NLRB 1626 (1976), enfd. 575 F.2d 896 (D.C. Cir. 1978); and *Masters, Mates & Pilots (Newport Tankers)*, 233 NLRB 245 (1977), vacated and remanded sub nom. *Newport Tankers Corp. v. NLRB*, 575 F.2d 477 (4th Cir. 1978), cert. denied 439 U.S. 928 (1978), on remand 240 NLRB 1240 (1979).

[29] The judge rejected the Respondent's contention that the picketing constituted lawful area standards picketing. He concluded, however, that even assuming arguendo that the Respondent's picketing was strictly area standards picketing, the picketing would nonetheless violate Sec. 8(b)(1)(B), relying on *Sheet Metal Workers Local l7 (George Koch Sons)*, 199 NLRB 166 (1972), enfd. 502 F.2d 1159 (1st Cir. 1973), cert. denied 416 U.S. 904 (1974).

[30] The Respondent's replacement objective included both seeking to have the Charging Parties replace those ''non-MMP'' licensed deck officers they had hired with the Respondent's members, along with seeking to prevent the Charging Parties from discharging those ''MMP'' licensed deck officers who were presently employed by the Charging Parties, and replacing them with ''non-MMP'' licensed deck officers.

[31] S. Rep. No. 105, 80th Cong., 1st Sess. 21 (1947); *Royal Electric*, 481 U.S. at 591.

[32] *Royal Electric*, 481 U.S. at 590 fn. 13.

[33] Because we find that the Respondent violated Sec. 8(b)(1)(B) by striking and picketing to replace the Charging Parties' masters and chief mates, we find it unnecessary to pass on whether the Respondent's other objects—to gain recognition, to achieve a collective-bargaining agreement, and to gain adherence to area labor standards—also violated Sec. 8(b)(1)(B). We thus refrain from passing on the effect of the Court's decision in *Royal Electric* on the Board's decisions in *Marine & Marketing International Corp.*, *Westchester Marine Shipping Co.*, *Cove Tankers Corp.*, and *Newport Tankers Corp*. See fn. 28, supra. As it is unnecessary for resolution of this case, we also refrain from passing on the judge's conclusion that the Respondent's picketing would have violated Sec. 8(b)(1)(B) even if it had been pure area standards picketing. We also find it unnecessary to pass on the validity of the judge's alternative application of an effects theory to the job action and picketing, under which the judge found that any concerted activity by the Respondent is illegal because a ''logical and foreseeable effect must be that its [picket] lines will be honored.'' We have therefore modified the recommended Order by deleting any language inserted by the judge based on the effects theory.

Finally, because we find the Respondent's replacement objective constituted direct coercion of the Charging Parties' choice of their 8(b)(1)(B) representatives, we find it unnecessary to address the issue whether the Respondent's intent to represent only the Charging Parties' nonstatutory employees would be sufficient to bring its conduct within the purview of Sec. 8(b)(1)(B) absent any direct coercion. See *Royal Electric*, 481 U.S. at 590 fn. 13.

of their own choosing, violated Section 8(b)(1)(B) of the Act.

C. *The Fines and Threats to Fine*

In addition to conducting the job action and picketing, the Respondent also threatened to fine, brought internal union charges against, and fined members for violating the Respondent's October 3 job directive.[34] Fines were levied against approximately 100 active licensed deck officers, management personnel of MOC, Keystone, and Mormac, and against certain pilot-members.[35] Some of the fines were levied by the strike committees without any hearing on the charges, and others were levied after notice and hearings held by the trial committees.

The judge found that the Respondent's conduct in threatening to fine, filing internal union charges, and fining the member officers (whom the judge found to be 8(b)(1)(B) representatives), violated that section because the Respondent's actions had the likely effect of forcing the officers to comply with the October 3 strike directive, thereby depriving the Charging Parties of their 8(b)(1)(B) representatives. For the following reasons, although we agree with the judge that the Respondent violated Section 8(b)(1)(B) by charging and fining the masters and chiefs mates, we find that the Respondent did not violate the Act by charging and fining the second and third mates, and the pilot-members of the Respondent.[36]

As we discussed above, the Supreme Court concluded in *Royal Electric* that in order to find an 8(b)(1)(B) violation in a situation where a union attempts to coerce an employer indirectly through fining its supervisors, the supervisor-member fined must actually possess grievance adjustment or collective-bargaining responsibilities, and a union must either have or be seeking a collective-bargaining relationship with the employer.[37] In footnote 13 of *Royal Electric* the Supreme Court commented that it was not faced with the question whether indirect coercion of an employer in its selection of a representative through ''a union's selective enforcement of a facially uniform rule'' would constitute a violation of Section 8(b)(1)(B) without regard to whether the union has a bargaining relationship with the employer.[38] The Court implied, however, by citing langauge from the Ninth Circuit's *Chewelah Contractors'* decision, that an 8(b)(1)(B) violation may be found in those circumstances absent a bargaining relationship ''if there is evidence that the union's actual purpose in enforcing its bylaw was to interfere with the employer's selection.''[39] Although we recognize that the present case does not involve the selective enforcement of a facially uniform union rule, we find merit in the General Counsel's analysis and conclude that because the Respondent's ''actual purpose'' in enforcing its October 3 job directive, including the threats to fine, charges, and fines against its masters and chief mates, whom we have found to be 8(b)(1)(B) representatives, was to interfere with the Charging Parties' selection of their 8(b)(1)(B) representatives, the Respondent has violated Section 8(b)(l)(B).[40]

The record clearly reveals that the actual purpose of the Respondent's threats to fine, charges, and fines against the Charging Parties' licensed deck officers was to force them to comply with the October 3 directive and participate in the job action by refusing to work under the lower terms of employment offered by the Charging Parties. In reaching this conclusion, we rely on the Respondent's directive that the licensed deck officers should refuse to leave the vessels unless forcibly removed by arrest or legal instrument, and on the stiff penalties imposed for refusal to comply with the directive.[41] The Respondent's clear objective, which it attempted to achieve through forcing the officers to refuse to work, along with exerting other pressures on the Charging Parties, was to coerce the Charging Parties either to fail to replace or to rehire the Respondent's members as their licensed deck officers.

Thus, in light of the parties' stipulation that the masters and chief mates are 8(b)(1)(B) representatives, the Respondent's conduct directed at them clearly coerced the Charging Parties in their selection of their 8(b)(1)(B) representatives, thereby violating that section of the Act.[42] In view of our finding, however, that

[34] Although the record contains evidence that some members were fined even after they attempted to resign prior to charges being filed, we are not faced with the issue whether the Respondent violated the Act by refusing to accept any of its members' resignations, because this allegation was withdrawn from the General Counsel's complaint.

[35] The pilot-members were not employees of the Charging Parties, but on occasion acted as independent contractors when needed to pilot certain vessels of the Charging Parties. There were at least four pilot-members fined by the Respondent.

[36] We agree with the judge's finding that all the internal union charges and fines brought against MMP members, former members, and applicants for membership, with or without notice and hearing, were authorized by the Respondent.

[37] The Respondent here seeks to represent the Charging Parties' supervisors, who are not employees under the Act. We, however, find it unnecessary to decide whether this constitutes a sufficient representational objective within the meaning of *Royal Electric*.

[38] 481 U.S. at 490 fn. 13.

[39] 481 U.S. at 590 fn. l3, citing *NLRB v. Electrical Workers IBEW Local 73*, 714 F.2d 870, 872 (9th Cir. 1980).

[40] As in the case of direct coercion, we thus do not need to resolve in this case whether the Respondent's intent to represent only the Charging Parties' nonstatutory employees would be sufficient to bring its conduct within the purview of Sec. 8(b)(1)(B) absent this actual purpose.

[41] Some of the fines were as high as $25,000, plus daily base pay and plan contributions for future noncompliance.

[42] Because we agree with the judge that there is ample evidence in the record that MOC Vice President of Operations Robert Johnston, and MOC Port Captains Jack Craft, William H. Adams, and Richard Satava are 8(b)(1)(B) representatives, we find that the Respondent's charges and fines against these individuals violated Sec. 8(b)(1)(B). The record reflects that Johnston has actually negotiated collective-bargaining agreements with all but one union representing individuals employed by MOC, and that he is the individual responsible for making a final determination on grievances. Craft has

the General Counsel did not sustain his burden of proving that the second and third mates are 8(b)(1)(B) representatives,[43] and the General Counsel's admission that the pilot-members are not 8(b)(1)(B) representatives, the Respondent did not violate the Act by threatening to fine, bringing internal union charges against, and fining these individuals.[44]

D. *Threats of Violence*

It is alleged that between mid- to late October, the Respondent made certain threats of violence involving an MOC vessel, the *Puerto Rican*, and a Keystone vessel, the *Juneau*, which violated both Section 8(b)(1)(A) and (B) of the Act.

As detailed more fully in the judge's decision, on October 25, the pleasure craft *George Meany*, hired and paid for by the Respondent, carrying pickets, followed the *Puerto Rican* for 2 hours as it headed for Alameda, California. When the vessel *Puerto Rican* arrived at the Encina terminal and attempted to tie up, one of the picket boat's crewmembers said: ''[I]f you tie up this ship we're going to close this terminal down.'' Two of the pickets threatened the second mate, Charles Ebersole: ''[W]hen you get off that ship you'll never work again.'' Scott Fuller, the owner and operator of the *Meany*,[45] said in answer to the chief mate: ''You'll be dead tomorrow. We'll get you.'' These comments were made in the presence of unlicensed seamen.

The *Puerto Rican* never docked that day. During the docking procedure the next day, Fuller made a gun with his hand, and pointing at Ebersole, mouthed, ''I'm going to get you,'' in the presence of unlicensed seamen. That evening Fuller threatened an unlicensed seaman: ''We're going to get you. We are going to get your kids too. We have got your number . . . if you come on the dock, you better carry a gun.'' The following day, October 27, the picket boat stayed near the *Puerto Rican*, and several times it proceeded at a high rate of speed as though it would ram the vessel, and then threw the engine in reverse just before hitting the vessel. This was done in the presence of licensed and unlicensed personnel. On October 29, after the *Puerto Rican* had discharged its cargo, the vessel sailed for a dock in Richmond. For most of the voyage, it was followed or preceded by the *Meany*, which frequently positioned itself between a tug and the *Puerto Rican*, which the tug was attempting to assist. While the *Puerto Rican* was tying up at the dock, Fuller was also tying up the *Meany*. Keystone Attorney Pantoni was there, and Fuller twice made motions as if he were shooting the lawyer, as did another of the *Meany's* crewmen.

At various intervals during the time period October 19 to 21, the picket boat *George Meany* also followed the MOC vessel *Juneau*. On October 19, the *Meany* remained around the vessel *Juneau* for over an hour. The following day, while the *Juneau* was being piloted to Venicia, someone from the *Meany* identified himself on the pilot's radio and said: ''Do not dock the ship, the ship is hot.'' When the pilot stated that he needed the assistance of three prearranged tugs, the tugs replied that they would not handle the *Juneau*. At that point, MOC Port Captain Satava announced that the picketers on the *Meany* were endangering the safe navigation of the vessel, which needed tug assistance. The reply from the *Meany* was that this was a picket, that they were acting under instructions from Don Fuller of the Respondent, and that the *Juneau* should proceed to Anchorage 25, an anchorage which MOC claimed was too small for the vessel. Finally, the *Juneau's* charterer determined that it would return to another anchorage. The next day, October 21, arrangements had been made to fuel and bunker the *Juneau* at its anchorage by barge. The *Meany* cruised near the barge, its crew calling people ''finks'' and ''scabs.'' One crewman of the *Meany* said: ''You're not even going to have a job in another week. Why are you doing this? None of you are qualified to pump that barge?'' Although the *Juneau* called on the Coast Guard for help to prevent the harassment, this was only temporarily successful. Later the *Meany* came back to the barge, its crew yelling, making obscene gestures, and shaking their fists. The picketers con-

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actually adjusted grievances with representatives of the MMP and, in addition, with SIU, MEBA, and ARA representatives. Adams has adjusted grievances with all the unions representing those employed at MOC, including, MMP, MEBA, SIU, and the ARA. Satava has met with representatives of MEBA and the SIU to adjust grievances.

The record does not contain the job titles of several of the licensed deck officers who were fined. We leave to the compliance stage of this proceeding the determination of the positions of the unknown individuals. If these individuals are either masters or chief mates, then we find that the Respondent's fines against them violated Sec. 8(b)(1)(B) of the Act and that they would be covered by the remedial provisions of our Order.

[43] Contrary to the judge, we disagree with the General Counsel's argument that we should find an 8(b)(1)(B) violation, irrespective of an individual's status as an 8(b)(1)(B) representative, based on the theory that the fines were imposed in furtherance of the Respondent's unlawful strike. We decline to apply this expansive theory in an 8(b)(1)(B) context in view of the Supreme Court's decision in *Royal Electric* limiting the scope of that provision.

[44] The judge also found that the Respondent violated Sec. 8(b)(1)(B) by fining Keystone Port Captain Hamilton G. Thomas and Mormac (Gastran's) personnel manager David Lentz. The judge inferred that these individuals were 8(b)(1)(B) representatives from their titles and the responsibilities of persons holding similar titles. The Supreme Court's decision in *Royal Electric* requires evidence of a supervisor's actual possession of grievance adjustment or collective-bargaining responsibilities. 481 U.S. at 586. Because the record contains no evidence that either Thomas or Lentz had grievance-adjustment or collective-bargaining responsibilities, the General Counsel has failed to meet his burden of proving that they are 8(b)(1)(B) representatives. We therefore find that the Respondent's charges and fines against Thomas and Lentz did not violate Sec. 8(b)(1)(B).

[45] Scott Fuller is the son of the Respondent's assistant port agent Don Fuller Sr. Although it is unclear from the record, it appears that all the threatening comments were made by Scott (not Don) Fuller. Nevertheless, whether the comments were made either by Scott or Don Fuller, since they were made by one or both of the Fullers while they were involved as picketers on the *Meany* (which was hired and paid for by the Respondent), we find the Respondent responsible for these threatening remarks.

vinced an engineman to leave the barge and his employment.

The judge found that the threats involving the picket boat *Meany* and the Keystone vessel *Puerto Rican*, and those threats involving the *Meany* and the MOC vessel *Juneau* all violated Section 8(b)(1)(A) of the Act. With respect to the *Puerto Rican*, the judge stated that the threat made directly to the employee required no explanation, while the other threats directed at the Keystone and MOC supervisors violated Section 8(b)(1)(A) because they were made in the presence of employees.[46]

The judge also found that the threats directed against second mate Ebersole of the *Puerto Rican*, and those directed against the master of the *Juneau* violated Section 8(b)(1)(B) because they had a reasonable tendency to force them to leave their jobs.

We agree with the judge that the threats involving the vessel *Puerto Rican* violated Section 8(b)(1)(A). Because the threats against the unlicensed seaman, an employee under the Act, constituted threats of bodily harm to himself and his family, we conclude that these threats clearly restrained and coerced this employee in the exercise of his Section 7 rights, constituting a violation of Section 8(b)(1)(A).[47] The picketers aboard the *George Meany* made various other threats and participated in threatening conduct during the time period October 25 through 29, which was calculated to instill fear of imminent bodily harm in the minds of the *Puerto Rican* unlicensed seamen. The *Meany* picketers also made specific threats against second mate Ebersole and a Keystone attorney which involved the infliction of bodily harm, and these were made in the presence of unlicensed seamen. Thus, we find that these additional threats and threatening conduct also violated Section 8(b)(1)(A).[48]

The threats made against second mate Ebersole on the *Puerto Rican*, however, did not violate Section 8(b)(1)(B) in light of our finding that second mates do not constitute 8(b)(1)(B) representatives. Therefore, the threats against second mate Ebersole, who was not a Keystone 8(b)(1)(B) representative, did not restrain or coerce Charging Party Keystone in the selection of its 8(b)(1)(B) representatives.[49]

With respect to the threats against the MOC vessel *Juneau*, we disagree with the judge and find that these threats did not violate either Section 8(b)(1)(A) or (B) of the Act. The conduct directed against the *Juneau* during the time period October 19–21 consisted mainly of the *Meany* crew calling the crew of the *Juneau* ''finks'' and ''scabs,'' which is typical picket line activity. We find that this nonthreatening conduct, which did not involve any threats of bodily harm, did not restrain or coerce the *Juneau* employees in the exercise of their Section 7 rights.[50] For these same reasons, we also find that the conduct directed against the master of the *Juneau* did not violate Section 8(b)(1)(B) of the Act.

AMENDED CONCLUSIONS OF LAW

1. By striking and picketing the Charging Parties to force them to replace their masters and chief mates and/or to prevent them from hiring masters and chief mates, or other 8(b)(1)(B) representatives, of their own choosing, the Respondent has violated Section 8(b)(1)(B) of the Act.

2. By threatening to fine, bringing internal union charges against, and fining the Charging Parties' masters and chief mates, MOC Vice President of Operations Robert Johnston, and MOC Port Captains Jack Craft, William Adams, and Richard Satava, the Respondent has violated Section 8(b)(1)(B) of the Act.

3. By the threats of violence against a second mate in the presence of unlicensed seamen and other threatening activity directed at the crew of the Keystone vessel, the *Puerto Rican*, by the picketers on the *George Meany*, during the time period October 25–29, 1984, the Respondent violated Section 8(b)(1)(A) of the Act.

4. The Respondent has not violated the Act in any other way.

REMEDY

Having found that the Respondent violated Section 8(b)(1)(B) by striking and picketing the Charging Parties to force them to replace their masters and chief mates, and/or to prevent them from hiring masters and chief mates, and other 8(b)(1)(B) representatives, of their own choosing; and having found that the Respondent violated Section 8(b)(1)(B) by threatening to fine, bringing internal union charges against, and fining the Charging Parties' masters and chief mates, and other 8(b)(1)(B) representatives; and having found that the Respondent violated Section 8(b)(1)(A) by threatening violence and participating in other threatening activity directed at the crew of a Keystone vessel, we shall order that it cease and desist and take certain affirmative action necessary to effectuate the policies of the Act,[51] including the refund of any moneys paid

[46] The judge applied the theory that threats of violence made in the presence of employees are calculated to serve as a warning to nonstriking employees that like violence may be inflicted on them if they do not support the labor organization's activity, citing *Wholesale Union District 65 (I. Posner)*, 133 NLRB 1555, 1566 (1961).

[47] See *Operating Engineers Local 450 (Houston Chapter AGC)*, 267 NLRB 775, 788–789 (1983); *Boilermakers Local 27 (Daniel Construction)*, 266 NLRB 602, 604 (1983).

[48] See *Retail Wholesale Union (I. Posner)*, supra at 1566.

[49] We reject the judge's and the General Counsel's theory that we should find that, irrespective of Ebersole's lack of status as an 8(b)(1)(B) representative, this conduct violated Sec. 8(b)(1)(B), merely because the picketing itself violated that section. See fn. 43, supra.

[50] See *Boise Cascade*, 300 NLRB 80 (1990); *Machinists Lodge 1233 (General Dynamics)*, 284 NLRB 1101, 1106 (1987).

[51] The judge rejected the Charging Parties' request that the recommended Order include a provision barring the Respondent's refusal to accept the res-

as a result of the unlawful fines, with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Because the normal posting of the notice may be insufficient to advise all of the Respondent's members of the relief granted herein, we shall order that the attached Appendix be published in the Respondent's official newspaper.[52]

ORDER

The National Labor Relations Board orders that the Respondent, International Organization of Masters, Mates and Pilots, Marine Division, International Longshoremen's Association, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Striking, picketing, causing or encouraging to be picketed, or otherwise engaging in or directing, ordering, instructing, advising, encouraging, or otherwise causing its members to engage in a job action, strike, or picketing, directed against Marine Transport Lines Company, Inc., Keystone Shipping Company, Maritime Overseas Corporation, and Moore McCormack Bulk Transport, Inc., their subsidiaries and affiliates (Companies), or any other employer, where an object is to prevent any of the Companies from hiring or employing masters or chief mates, or any other 8(b)(1)(B) representatives, of their own choosing, or to require any of the Companies, or any other employer, to replace their masters and chief mates, or any other 8(b)(1)(B) representatives, with masters and chief mates who are members of or who are represented by MMP.

(b) Bringing charges, or instructing to be charged, trying, fining, or otherwise disciplining or threatening to discipline, or attempting by any means to collect or enforce any fine or enforce any discipline imposed against any MMP member or applicant for membership or former member or former applicant for membership employed by the Companies for performing collective-bargaining or grievance adjustment responsibilities within the meaning of Section 8(b)(1)(B), as a master, chief mate, or any other 8(b)(1)(B) representative, for failing or refusing to comply with or participate in MMP's job action and picketing activity against the Companies, or any instruction, order, or direction prohibited by this Order, where the actual purpose of the threats and/or imposition of discipline is to interfere with the Companies' selection of their 8(b)(1)(B) representatives, during the period beginning October 3, 1984, to date.

(c) In any other manner restraining or coercing any employer in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

(d) Restraining or coercing employees by threatening to assault or to commit any other acts of violence against employees, or against supervisors, in the presence of employees or under circumstances from which employees are likely to become aware of such threats or conduct.

(e) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the charges, proceedings, fines, and other disciplinary actions taken against its members or applicants for membership or former members or former applicants for membership, who were also 8(b)(1)(B) representatives of the Companies as found in this decision, for failing to comply with or otherwise participate in the job action and picketing against the Companies during the period October 3, 1984, to date.

(b) Make whole any disciplined MMP member, former member, applicant, or former applicant, who is also an 8(b)(1)(B) representative as found in this decision, by refunding any fines paid, with interest thereon as provided in the remedy section of this decision.

(c) Remove from MMP's membership records any references to the unlawful charges, proceedings, fines, and other disciplinary proceedings, taken against any disciplined MMP member, former member, applicant, or former applicant, who is also an 8(b)(1)(B) representative as found in this decision, and notify those persons so disciplined that it has done so and that it will not use the disciplinary proceedings against them in any way.

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ignations of licensed deck officers and prohibiting the Respondent from instructing various fringe benefit plans not to grant benefits to licensed deck officers. We agree with the judge. As noted by the judge, neither allegation was included in the complaint, and the issue involving the benefit plans was not fully litigated. As to the issue regarding the refusal to accept resignations, the judge correctly concluded that supervisors, not being statutory employees, have no statutory right to resign from a labor organization under Sec. 8(b)(1)(A). *Birmingham News Co*., supra, 300 NLRB 1 (1990); *Noral Color Corp*., 300 NLRB 7 (1990). Chairman Stephens did not participate in the decisions in those two cases and takes no position on whether they were correctly decided. He agrees, however, that supervisors have no right to resign under Sec. 8(b)(1)(A) of the Act, and that, in any event, the General Counsel did not allege or litigate any violation based on the Respondent's refusal to accept resignations.

[52] We are granting this remedy because we find that the Respondent's members are frequently employed at sea for periods of time well in excess of the 60-day notice posting period. See *Electrical Workers IBEW Local 3 (Northern Telecom)*, 265 NLRB 213, 219 fn. 3 (1982).

(d) Preserve and, on request, make available to the Board or its agents, for examination and copying, all records necessary to analyze the amount of MMP's liability under the terms of this Order.

(e) Post at its meeting halls, port offices, hiring halls, headquarters building, and any other offices maintained or operated by it copies of the attached notice marked ''Appendix.''[53] Copies of said notice, on forms provided by the Regional Director for Region 5, after being signed by MMP's authorized representative, shall be posted by MMP immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by MMP to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Publish in its official newspaper, ''The Master, Mate & Pilot,'' in the issue published immediately after the issuance of this Order, a copy of the attached notice marked ''Appendix.''

(g) Sign and return to the Regional Director sufficient copies of the notice for posting by the Companies, if willing, at all places where notices to employees and licensed deck officers are customarily posted. Such copies shall be furnished to MMP by the Regional Director.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps MMP has taken to comply with the terms of this Order.

IT IS FURTHER ORDERED that the protective order entered into during the hearing prohibiting the parties from disclosing the contents of certain exhibits and testimony be, and the same is, continued in full force and effect, and that all exhibits introduced into evidence under seal will continue to be maintained under seal, and that portions of the transcript of the hearing heard during in camera sessions will not be open to the public.

CHAIRMAN STEPHENS, dissenting in part.

I would find that the second and third mates possess authority under the collective-bargaining agreement to adjust grievances within the meaning of Section 8(b)(1)(B) of the Act. Therefore, contrary to my colleagues, I would find that the Respondent's job action and picketing violated Section 8(b)(1)(B) insofar as it had as an object the discharge of second and third mates selected by the Charging Parties and their replacement with the Respondents' member officers. I would also find that the Respondent violated Section 8(b)(1)(B) by fining and threatening to fine the second and third mates for failing to obey the Respondent's unlawful job action directive. Finally, I would find that the threats to Charging Party Keystone's second mate, Charles Ebersole, violated Section 8(b)(1)(B). In all other respects I join the opinion for the majority.

[53] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT strike, picket, cause or encourage to be picketed, or otherwise engage in or direct, order, instruct, advise, encourage, or otherwise cause its members to engage in a job action, strike, or picketing, directed against Marine Transport Lines Company, Inc., Keystone Shipping Company, Maritime Overseas Corporation, and Moore McCormack Bulk Transport, Inc., their subsidiaries and affiliates (Companies), or any other employer, where an object is to prevent any of the Companies from hiring or employing any masters or chief mates or any other 8(b)(1)(B) representatives, or replacement masters or chief mates or any other replacement 8(b)(1)(B) representatives, with masters or chief mates or other 8(b)(1)(B) representatives who are members of or who are represented by us.

WE WILL NOT charge, or instruct to be charged, try, fine, or otherwise discipline or threaten to discipline, or attempt by any means to collect or enforce any fine or enforce any discipline imposed against any of our members or applicants for membership or former members or former applicants for membership employed by the Companies as masters or chief mates or as other 8(b)(1)(B) representatives, for failing or refusing to comply with or participate in our job action and picketing activity against the Companies, or any instruction, order, or direction prohibited by this Order, where the actual purpose of the threats and/or imposition of discipline is to interfere with the Companies' selection of their 8(b)(1)(B) representatives, during the period beginning October 3, 1984, to date.

WE WILL NOT in any other manner restrain or coerce any employer in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

WE WILL NOT restrain or coerce employees by threatening to assault or to commit any other acts of violence against employees, or against supervisors, in the presence of employees or under circumstances from which employees are likely to become aware of such threats or conduct.

WE WILL NOT in any like or related manner restrain or coerce the employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL rescind the charges, proceedings, fines, and other disciplinary actions taken against its members or applicants for membership or former members or former applicants for membership, who were also 8(b)(1)(B) representatives of the Companies, for failing to comply with or otherwise participate in the job action and picketing against the Companies during the period October 3, 1984, to date.

WE WILL make whole any disciplined MMP member, former member, applicant, or former applicant, who is also an 8(b)(1)(B) representative, by refunding any fines paid, with interest.

WE WILL remove from our membership records any references to the unlawful charges, proceedings, fines, and other disciplinary proceedings, and notify in writing all persons so disciplined that we have done so and that we will not use the disciplinary proceedings against them in any way.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, MARINE DIVISION, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO

Harvey A. Holzman, Esq., Joseph J. Baniszewski, Esq., and *Mark Carissimi, Esq.*, for the General Counsel.

Seymour M. Waldman, Esq. and *Patricia McConnell, Esq. (Vladeck, Waldman, Elias & Englehard)*, and *Burton M. Epstein, Esq. (Steinberg & Tugendrajch)*, of New York, New York, for the Respondent.

Eric A. Sisco, Esq., D. Michael Underhill, Esq., Daniel C. Gerhan, Esq., and *Thomas K. Wotring, Esq. (Morgan, Lewis & Bockius)*, of Washington, D.C., for Charging Party Marine Transport.

Bettina B. Plevan, Esq., Joan Z. McAvoy, Esq., Toby R. Hyman, Esq., and *Joseph Baumgarten, Esq. (Proskauer, Rose, Goetz & Mendelsohn)*, of New York, New York, for Charging Party Keystone Shipping.

Andrew E. Zelman, Esq., Roger H. Briton, Esq., and *Jane B. Jacobs, Esq. (Seham, Klein & Zelman)*, of New York, New York, for Charging Party Maritime Overseas.

Richard N. Goldstein, Esq. (Dretzin & Kauff), of New York, New York, for Charging Party Moore McCormack.

DECISION

PRELIMINARY STATEMENT

BENJAMIN SCHLESINGER, Administrative Law Judge. Section 8(b)(1)(B) of the National Labor Relations Act, 29 U.S.C. § 151 et seq., provides that ''[i]t shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.'' The complaints in this proceeding allege that, commencing on 3 October 1984,[1] Respondent International Organization of Masters, Mates and Pilots, Marine Division, International Longshoremen's Association, AFL–CIO (MM&P) violated that section by engaging in job actions against and picketing of Charging Parties Marine Transport Lines Company, Inc. (MTL), Keystone Shipping Company (Keystone), Maritime Overseas Corporation (MOC), and Moore McCormack Bulk Transport, Inc. (Mormac; all the Charging Parties being referred to collectively as the Companies), to restrain them in their selection of the supervisory masters and mates aboard their oceangoing vessels. MM&P contends that its actions were legal because the Companies, as their agreements with Respondent terminated, walked away from MM&P, instituted their own terms and conditions of employment, which were far less than what they previously had contracted with MM&P, and refused thereafter to deal with MM&P, which was permitted by law to protest the Companies' substandard wages and terms and conditions of employment.[2]

[1] All dates refer to the year 1984, unless otherwise stated.

[2] The relevant docket entries are as follows: The charge in Case 5–CB–4870 (formerly Case 12–CB–2681) was filed by MTL on 9 October, and a complaint issued thereon in Region 12 on 12 December. The case was transferred by the General Counsel on 13 December to Region 5, which issued an amended complaint on 18 December. The charge in Case 5–CB–4885 (formerly Case 22–CB–5188) was filed by Keystone on 19 October, and a complaint issued thereon in Region 22 on 28 December. The case was transferred by the General Counsel on 3 January 1985 to Region 5. The charge in Case 5–CB–4886 (formerly Case 32–CB–1893) was filed by Keystone on 26 October and amended on 29 October. The charge in Case 5–CB–4887 (formerly Case 32–CB–1898) was filed by MOC on 6 November and amended on 13 and 26 December. On 31 December, the two Region 32 cases were consolidated and a consolidated complaint issued. By orders dated 3 January 1985, the General Counsel transferred both cases to Region 5, which on 4 January 1985 issued a consolidated complaint, which was thereafter amended on 18 January 1985 and at trial. The charge in Case 5–CB–4907 (formerly Case 1–CB–6125) was filed by Mormac on 21 December and was transferred by the General Counsel to Region 5 by order dated 18 January 1985. The charge was amended on 23 January 1985, and complaint thereon issued on 25 January 1985. That proceeding was consolidated with the other proceeding at the hearing, which was held in Baltimore, Maryland, on various dates from January to May 1985.

In the memorandum of law submitted by counsel for the General Counsel, a motion was made to delete the following references from the amended consolidated complaint which had been alleged as unfair labor practices: from par. 11(b), ''October 7, 1984 S.S. Atigun Pass Valdez, Alaska''; from par. 12(b), ''October 4 1984 S.S. Overseas Harriette Philadelphia, Pennsylvania,'' ''October 8, 1984 S.S. Overseas Alice Subic Bay, Philippines,'' ''October 10, 1984 S.S. Overseas Vivian Subic Bay, Philippines,'' ''Unknown to General Counsel S.S. Overseas Valdez Indian Ocean''; from par. 12(a), ''October 12, 1984 S.S Overseas Arctic Empire, Louisiana,'' ''October 27, 1984 S.S. Overseas Arctic Port Arthur, Texas,'' ''November 1, 1984 S.S. Overseas Boston Long Beach, California,'' and ''November 27, 1984 S.S. Overseas Washington Garyville, Louisiana''; andfrom par. 11(a), ''October 4, 1984 S.S. Energy Independence Brayton Point, Massachusetts,'' ''October 10 or 11, 1984 5.5. Energy Independence Brayton Point, Massachusetts,'' ''October 19–21, 1984 S.S. Meton Los Mareas, Puerto Rico,'' and ''December 18, 1984 S.S. Energy Independence Baltimore, Maryland.'' Counsel for the General Counsel also moved to delete par. 13(a)(ii)(8) and 13(d). There being no opposition, the motions are granted.

Counsel for the General Counsel's memorandum also includes a motion to amend the consolidated complaint by adding the following: to par. 11(a), ''Mid-November 1984 S.S. Chilbar Pier 10, South Locust Point Terminal, Baltimore, Maryland''; and to par. 12(a), ''December 16, 1984 Overseas Arctic St. Rose, LA,'' ''December 28, 1984 Overseas Harriette Newport News, VA,'' ''January 3, 1985 Overseas Washington Baton Rouge, LA,'' and ''January 13, 1985 Overseas Arctic Alliance, LA.'' There being no opposition, this motion is granted. Finally, counsel for the General Counsel moved to amend the consolidated complaint in certain respects, primarily to conform the pleadings to the proof. The motion is granted without opposition to the extent that my findings of fact support the amendments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

A. *The Companies*

The parties have stipulated, and I find, that at all times material MTL, a Delaware corporation with its principal office and place of business located in Secaucus, New Jersey, has been engaged in the ocean-shipping business, operating approximately 17 United States-flag oceangoing vessels in foreign and interstate coastwise trade. Sixteen of the vessels are tankers, which are vessels which carry liquid products, such as petroleum products. The remaining vessel is a dry bulk carrier, which carries dry cargo in bulk, such as grain or coal. The Companies are primarily tanker companies, and this dispute involves the tanker segment of the maritime industry.[3] During the 12 months prior to 1 February 1985, MTL transported oil, grain, aviation fuel, and other commodities valued in excess of $1 million between the various States of the United States and in foreign commerce and, during the same period, derived gross revenues in excess of $1 million. In addition, during the same period, MTL performed aviation fuel delivery services valued in excess of $1 million for the United States Department of Defense, Military Sealift Command (MSC),[4] at various locations throughout the world, and those operations have a substantial impact on the national defense of the United States.

The parties have also stipulated, and I find, that keystone, a Delaware corporation having its principal office and place of business in Philadelphia, Pennsylvania, has been engaged in the business of operating approximately 20 United States-flag oceangoing vessels in foreign and interstate coastwise trade. During the 12 months prior to 1 February 1985, Keystone transported chemicals, petroleum, aviation fuel, coal, and other commodities valued in excess of $1 million between the various States of the United States and in foreign commerce and, during the same period, derived gross revenues in excess of $1 million. Furthermore, during the same period, Keystone performed aviation, coal, and petroleum products delivery services valued in excess of $1 million, for the MSC at various locations throughout the world, and those operations have a substantial impact upon the national defense of the United States.

The parties further stipulated, and I find, that MOC, a New York corporation with its principal office and place of business in New York, New York, has been engaged in the business of operating approximately 14 United States-flag oceangoing vessels in foreign and interstate coastwise trade. Twelve of the vessels are tankers and two are bulk carriers; three tankers and one bulk carrier are on charter to MSC. During the 12 months prior to 1 February 1985, MOC transported chemicals, petroleum, aviation fuel, and other commodities valued in excess of $50,000 between the various States of the United States and in foreign commerce and, during the same period, derived gross revenues in excess of $50,000. In addition, during the same period, MOC performed aviation fuel delivery services valued in excess of $1 million for the MSC at various locations throughout the world, and those operations have a substantial impact on the national defense of the United States.

Mormac is a collective reference to Moore McCormack Bulk Transport, Inc. (Bulk Transport) and Gastrans, Inc. (Gastrans), which are both Delaware corporations with offices and principal places of business located in Stamford, Connecticut, where they have been engaged in the business of operating approximately five United States-flag oceangoing vessels in trade between various ports in the United States and foreign countries. During the 12 months prior to 7 February 1985, Bulk Transport and Gastrans transported crude oil, liquid natural gas, fresh water, and other commodities valued in excess of $1 million between the various ports in the United States and foreign countries, and, during the same period, derived gross revenues in excess of $1 million. During the same period, Bulk Transport performed delivery services valued in excess of $50,000 for the MSC at various locations throughout the world.

I conclude, as the parties have stipulated, that MTL, Keystone, MOC, Bulk Transport, and Gastrans are each employers engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. *MM&P*

I also conclude and find, as all parties except Mormac have stipulated, that MM&P is an unincorporated association and is an organization in which statutory employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work. I therefore conclude that MM&P is a labor organization within the meaning of Section 2(5) of the Act.

Notwithstanding this conclusion, the instant dispute does not involve statutory employees under Section 2(3) of the Act. Rather, it involves those members of MM&P who run the Companies' oceangoing vessels, constitute MM&P's offshore membership, and are the Companies' licensed deck officers—its masters, chief (or first) mates, second mates, and third mates—all of whom have been stipulated to be supervisors of their respective employers within the meaning of Section 2(11) of the Act.

MM&P is an affiliate of the International Longshoremen's Association, AFL–CIO (ILA). Unlike many other national unions, MM&P does not have districts or locals, but it has offices in various ports throughout the United States and in Puerto Rico. Its international headquarters are in Linthicum Heights, Maryland (sometimes referred to as International) and, for operational purposes, its principal officers are its president and secretary-treasurer and its elected vice presidents are the heads of MM&P's different membership groups. Robert J. Lowen is the president of MM&P. Under him, in order of authority, are Lloyd M. Martin, secretary-treasurer;[5] and the three vice presidents of the offshore membership group: Ellwood Ryser, for the Gulf ports; David York, for the Pacific ports; and Henri L. Nereaux (and since

[3] There are separate collective-bargaining agreements for the tanker and dry cargo companies, and a number of MM&P documents refer to this dispute as a ''tanker job action'' against the ''runaway tanker companies.''

[4] The MSC is a branch of the United States Navy that is charged with the waterborne transportation of materials, such as liquid petroleum and dry cargo, for the Department of Defense. Nine of MTL's vessels are bare boat chartered to MSC, and MTL operates the ships under contract with MSC.

[5] The parties stipulated that both Lowen and Martin are agents of MM&P within the meaning of Sec. 2(13) of the Act.

1 January 1985, John Hayes), for the Atlantic ports. The foregoing are members of MM&P's general executive board, as are five other vice presidents, who head the pilots,[6] Atlantic and Gulf maritime region, Pacific maritime region, Great Lakes and Rivers maritime region, and communications and electronics group.

Below the vice presidents are about 20 appointed representatives, 14 of whom service the offshore membership, administer the offshore contracts, and assist the pensioners or their survivors or dependents and generally supervise all of MM&P's activities in their port or region.[7] Some of the full-time port representatives prominently mentioned in the record are Charles Landry, Boston, Massachusetts; Edward Gras and Ernest Swanson, New York, New York; David Haa, Baltimore, Maryland; James Titus, Houston, Texas; Richard Bara, Los Angeles, California; and Albert Groh, San Francisco, California. Jack Harry, Norfolk, Virginia, is a representative of MM&P's Federal government employees division. There are also ''pro tem'' representatives, who are usually appointed by the representative of the port. Among these, who were appointed between 1 June and the time of the hearing in this proceeding, are Steve Wilson, San Francisco, California, and Howard Hull, Tampa or Jacksonville, Florida. Finally, another name that will be mentioned in this Decision is Don Fuller, Sr., a representative of MM&P's Pacific maritime region in California. He was appointed to his position by MM&P's general executive board.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Status of Second and Third Mates*

Although the parties are in agreement about the supervisory status of all the licensed deck officers, they have stipulated only that masters and chief mates are representatives ''for the purpose of collective bargaining or the adjustment of grievances'' within the meaning of Section 8(b)(1)(B). They have not agreed about the second and third mates, who MM&P contends are neither collective bargainers nor grievance adjusters.

The Board does not require proof that an admitted supervisor has 8(b)(1)(B) functions. Rather, the Board's view is that a statutory supervisor is an 8(b)(1)(B) representative, *Operating Engineers Local 501 (Anheuser Busch)*, 199 NLRB 551 (1972), because the employer regularly draws on its ''reservoir'' of supervisors for promotion to jobs in which they function as collective bargainers and grievance adjusters. See, e.g., *Newspaper Guild Local 187 (Times Publishing)*, 196 NLRB 1121, 1122 (1972), remanded 489 F.2d 416 (3d Cir. 1973); *Carpenters Local 14 (Max M. Kaplan Properties)*, 217 NLRB 202 (1975); *Teamsters Local 296 (Northwest Publications)*, 263 NLRB 778, 779 fn. 6 (1982), enfd. 730 F.2d 768 (9th Cir. 1984); *Electrical Workers IBEW Local 11 (Bergelectric Corp.)*, 271 NLRB 25 fn. 5 (1984).

The ''reservoir doctrine'' is particularly appropriate to the facts in this proceeding because licensed deck officers are generally promoted from one position to another within each of the Companies. Indeed, the nature of the licensed deck officer is such that many work in all classifications. Robert Johnston, presently MOC's vice president of operations, commenced sailing as a third mate, then passed successive examinations for second mate, chief mate, and then master. Each step required service for 1 year before taking the next examination. He came ashore as a port captain[8] and was promoted to assistant vice president and later to his current position as a collective bargainer and MOC's final authority on the adjustment of grievances. He testified, without contradiction, that the frequency of the progression from third mate to master is ''[f]airly frequent.'' His was not a unique case among the witnesses in this proceeding, many of whom, masters of their vessels or port captains, had worked their way up through the ranks, from positions of third mate or even unlicensed seaman. Even MM&P's two principal officers, Lowen and Martin, served in all positions of licensed deck officer.

Furthermore, even discounting the normal progression through the ranks, licensed deck officers with more than two ratings frequently change positions, not only to higher positions but also to lower positions. Merely because an officer has a master's license does not mean that he will sail only as a master. Officers with master's or chief mate's licenses frequently sail as second and third mates, because there are more officers with master's and chief mate's licenses than there are jobs available for them. Officers who are not assigned permanently to a vessel frequently sail in different capacities with different vessels, one right after another.

In addition, there is need to relieve masters and chief mates who go on vacation, and frequently the relief position will be taken by one of the classifications not conceded by MM&P to be 8(b)(1)(B) representatives. For example, before October, all the MOC vessels carried a master, one chief mate, one second mate, and at least one third mate, sometimes two. On each vessel, there were the following permanent employees: a permanent master, a relief master, a chief mate, a second mate, and, on some vessels, a third mate. A permanent employee is entitled to return to his job, whereas a relief is often filled from the MM&P hiring hall, which would dispatch a relief officer. However, MOC also fills positions from its permanent employees: if a chief mate goes on vacation, his position would be filled by either the permanent second or third mate, who, on occasion, would sail as a relief master. There is no difference in responsibility of one who serves as a chief mate and, for example, a third mate who relieves as a chief mate. Thus, even if the second and third mates are not 8(b)(1)(B) representatives, there is a suf-

[6] This separate group of pilots is comprised of about 1000 members who have state licenses. Those members who have Coast Guard licenses to sail as master or mates, with endorsements permitting them to pilot vessels in specified waters, are members of the offshore group.

[7] Certain representatives are also referred to in the record as ''port agents'' or ''branch agents.''

[8] The port captain is assigned certain vessels and is responsible for visiting and overseeing the operation of the vessels, ensuring that the vessels perform their function pursuant to their charters, and watching after the maintenance, storing, and personnel of the vessel. The port captain adjusts grievances with all the unions which represent the members of the crews of the vessels, including MM&P, Marine Engineers Beneficial Association (MEBA), Radio Officers Union, American Radio Association, National Maritime Union (NMU), and Seafarers International Union (SIU). He normally meets with patrolmen of the respective unions.

If an emergency occurred, the port captain would stand watch, take command of the vessel, or do whatever was necessary to ensure the safety and security of the vessel. Johnston testified that if a licensed deck officer became ill or quit, the port captain should first request a waiver from the Coast Guard for the vessel to sail short of its manning requirement. If the waiver was not granted, then the port captain would ''ride the ship,'' meaning that he would assume whatever position was vacant.

ficient likelihood that they serve from time to time as such representatives.

Furthermore, the second and third mates adjust grievances.[9] The grievance procedure provided by the collective-bargaining agreements between the Companies and the NMU and SIU, the two unions which represent the unlicensed personnel (statutory ''employees'') aboard the vessels, requires as a first step the presentation of the complaint to the unlicensed personnel's ''immediate superior'' or ''superior officer,'' who is the watch officer. The watch officers are the second and third mates. Each officer stands two 4-hour watches and, when doing so, is in charge of the vessel and supervises the unlicensed seamen who serve under him on the watch. In fact, when a vessel is in port, a second or third mate may be the only deck officer on the vessel. The watch officer makes log entries in the deck log which may show that a seaman was not performing his duties as required or appropriate.

The tenor of the testimony was that second and third mates are responsible for resolving routine problems. Those frequently involve complaints of one seaman that another seaman who is standing watch is not carrying his full share of the duties; that the seaman was not relieved on time; that a seaman did not receive his proper coffee or meal break; that certain seamen, rather than other seamen, are responsible for performing certain jobs or tasks, such as moving the laundry; and that another crew did not make coffee or left the quarters dirty.

John McFadden, master of MTL's *Arabian Sea*, recalled that, when he was third mate, he had three seamen on the normal watch, two able-bodied seamen and one ordinary seaman. There was a dispute as to how long they would each stand watch on rotation, and McFadden settled it for them when they were unable to do so.[10] On another occasion, an able-bodied seaman tried to get out of moving some fire extinguishers on the basis that such work should be paid overtime. McFadden ordered him to do it, anyway. Yet another time, McFadden relieved an able-bodied seaman from watch because of drunkenness but did not log him because it was his first ''mess-up.''

Robert Pinder, master of Keystone's *Golden Gate*, identified the grievance handling of second and third mates in terms of giving out assignments of work when there is a dispute about who is to do a certain job and when. He remembered a dispute between two groups of seamen tying up the vessel, one group moving faster than the other, and the third mate's solution of reassigning some of the seamen to the other group to ensure that both groups would work equally quickly. Other examples of ''grievance handling'' of the second and third mates were decisions to send a group of seamen to dinner before another group and to recommend the discharge of one of the ordinary seamen, who was ultimately fired by Pinder. Pinder also recalled that, when he served as a third mate, he assigned members of the deck crew, rather than the steward's department, to bring clean linen aboard the vessel. When he was second mate, a pumpman refused to drop anchor and insisted that it was the boatswain's job; but Pinder directed the pumpman to do it. And, on another occasion, Pinder ordered the sailors on watch to retrieve bonded stores, despite the plea that the work was overtime and that others should perform it.

Johnston testified that typical disputes resolved by the watch stander involve able-bodied seamen who protest assignments to work in the pump room; whether overtime should be paid for the handling of stores—yes, if they are more than 25 feet from the vessel, no, if not; and who should run the winch during the docking operation, either the ordinary or the able-bodied seaman. The mate on watch may frequently be asked to overturn discipline previously meted out to a member of the crew.[11]

Many of these examples illustrate no more than the second or third mate's exercise of his supervisory function, rather than grievance adjusting. As the watch stander, the mate is the person entrusted to supervise the unlicensed personnel on his watch. He directs them in their duties; he tells them what to do. Many of the incidents related involve no more than directing one person or group to do something. If the order is not followed, a grievance might then be created which would have to be adjusted; but it is the mate who by his actions made the grievance arise.

Yet, there are sometimes quarrels and disputes which the second or third mate must resolve, particularly when they involve different interests of more than one person. When it is necessary to determine which of two unlicensed personnel is correct, there being a dispute between them about their separate duties and responsibilities, the mate resolves that grievance. For example, when a seaman complains that another seaman is not working hard enough or has not reported on time for relief or has not made coffee, the watch officer must resolve that complaint. In doing so, he maintains the industrial peace aboard the vessel; he keeps his employees satisfied by adjusting their disputes with other seamen.[12]

In sum, although many of the instances involve no more than supervision, there is some grievance adjustment present, albeit minor and personal, rather than contractual. The lack of magnitude of the problems and the nature of the problems should not, however, diminish the function of the second and third mate as grievance adjusters. *Detroit Newspaper Printing Pressmen's Union 13 (Detroit Free Press)*, 192 NLRB 106, 111 (1971). Section 8(b)(1)(B) status does not require participation in formalized grievances filed under or arising out of the collective-bargaining agreement. *Toledo Lithographers (Toledo Blade)*, 175 NLRB 1072, 1078 (1969). See also *Newark Newspaper Pressmen's Union (Newark Morning Ledger)*, 194 NLRB 566 (1971), where a supervisor arranged remedies for complaints, such as too little or too much heat and oil on the floor; *Electrical Workers IBEW Local 702 (Coulterville Tree Service)*, 219 NLRB 251 (1975), where the supervisor resolved a gripe of one employee that another

[9] There is no record support that they are collective bargainers, and no such contention is made.

[10] McFadden asked the SIU representative, a boatswain, whether there was anything in the union collective-bargaining agreement governing the resolution of the problem. Other than this discussion between a second or third mate and a representative of one of the unions of unlicensed seamen, the record is barren of any grievance filed by a union representative with the watch officer.

[11] MM&P was attempting to negotiate a provision in its agreement with MOC which provided that second and third mates shall not adjust disputes. MM&P had such a provision in two of its agreements. I decline to rule on the significance of these facts because the respective parties' contentions are equally accurate and deficient—MM&P, that the provision merely confirmed and continued prior practice; the others, that the provision was intended to provide for something new.

[12] McFadden testified that, as master, he expects the second and third mates to make their own decisions: he is not ''their babysitter.''

employee had not filled the gasoline cans; *Norwalk Typographical Union No. 529 (Hour Publishing)*, 241 NLRB 310, 315 (1979), where the supervisor orally adjusted ''personal grievances''; and *Laborers Local 322 (Kingsley Drilling)*, 229 NLRB 949 (1977), where a supervisor purchased work gloves and requested additional employees in response to complaints from employees. I conclude that second and third mates are grievance adjusters and thus 8(b)(1)(B) representatives. *Masters, Mates & Pilots (Westchester Marine)*, 219 NLRB 26, 35–36 (1975), enfd. 539 F.2d 554 (5th Cir. 1976), rehearing denied 547 F.2d 574 (5th Cir. 1977), cert. denied 434 U.S. 828 (1977).

B. *Prior Contractual Relations Between MM&P and MTL, Keystone, MOC, and Mormac*

For more than 20 years MTL and Keystone, and for 10 years Bulk Transport, and 5 years Gastrans had been members of the Tanker Service Committee, Inc. (Committee), a multiemployer association composed of employers engaged in the operation of the United States-flag oceangoing vessels. In 1981, the Committee negotiated a collective-bargaining agreement with MM&P covering these vessels (this and other agreements covering tankers will sometimes be referred to separately or collectively as the ''tanker agreement'') and governing the terms and conditions of employment of the employers' licensed deck officers. Another agreement was entered into by another multiemployer association, American Maritime Association (AMA), of which MOC had been a member for more than 20 years. Among the many provisions of the agreements, there were provisions for the recognition of MM&P as the collective-bargaining representative of the licensed deck officers, for the hiring of such officers exclusively from MM&P's hiring hall, the use of which is limited to MM&P members, and a union-security provision requiring that officers maintain their membership in MM&P.

The collective-bargaining agreements were for terms of 3 years and each provided that, unless one of the parties gave to the other party a notice of its intention to modify or amend the agreement at the expiration date, 15 June, the agreement automatically extended for a period of 1 year. On 8 April, MM&P notified not only the Committee and AMA but also the Companies and MTL's operating subsidiaries and its MSC operation[13] that it intended to modify and amend the agreements and was prepared to meet at a mutually convenient date. By letter dated 12 April the Committee replied to MM&P's letter, stating that the Committee also wished to engage in negotiations with respect to modifying and amending its agreement and was prepared to meet with MM&P.

However, by letter dated 6 June MTL notified the Committee, with a copy to MM&P, that the Committee was no longer authorized to bargain collectively or to negotiate with any labor organization other than the NMU (for its unlicensed personnel) on its behalf or on behalf of any of its affiliates or subsidiaries.[14] On 13 June, MM&P advised MTL, its operating subsidiaries, and its MSC operation, that by virtue of the automatic extension provision of the tanker agreement and MTL's ''failure to serve notice of termination pursuant thereto,'' the agreement ''has been renewed through June 15, 1985.'' Consistent with this position, MM&P notified all of its offshore port offices that it deemed the contract with MTL to have been automatically renewed and expressed the importance of keeping its members on board MTL's vessels. Permission to remain aboard or accept employment with MTL did not apply, however, to any officer who accepted direct employment with MTL outside of the tanker agreement's procedures and the shipping rules' clearance and assignment procedures. If an officer, whether a member or an applicant of MM&P, accepted employment without receiving the assignment through one of MM&P's hiring halls, that officer was subject to being brought up on charges and tried by an MM&P trial committee.

On 15 June the Committee, which still represented Keystone, Bulk Transport, and Gastrans, entered into an agreement with MM&P extending and modifying the provisions of the tanker agreement while the parties were still engaged in bargaining and agreed that all wage, overtime, and benefit increases would be retroactive to 16 June. However, either the Committee or MM&P had the right to terminate the extension by sending the other a telegraphic or written notice of termination no earlier than 48 hours from 15 June.

In other words, as of 15 June, the tanker agreement was still in effect with regard to Keystone, Bulk Transport and Gastrans—but not MTL. On that day, MTL distributed a letter to its licensed deck officers notifying them that it would no longer recognize MM&P as their collective-bargaining agent and offering them continued employment with a changed and reduced wage and benefit package.[15] At least eight MM&P members did not accept continued employment with MTL with the changed package; others did, but MTL replaced about 40 of its officers between 15 June and 3 October and thereafter replaced an additional 20 officers. MTL hired replacements for all such licensed deck officers from sources other than MM&P's hiring hall.

In the meantime, on 16 June MTL instituted an action in the United States District Court in Philadelphia, Pennsylvania, for a declaratory judgment that its agreement with MM&P had terminated. Several weeks thereafter, on 6 July, MM&P filed suit against MTL in the United States District Court for the Southern District of New York to enforce the tanker agreement which it alleged had been renewed. In December, MM&P filed in the Pennsylvania action an answer claiming that the tanker agreement continued in full force and that MTL was violating it and a counterclaim which sought an order requiring MTL to ''perform its obligations'' under the tanker agreement and reinstate all MM&P licensed deck officers who were replaced by officers not belonging to MM&P. Those parties have been litigating the issue of the appropriate forum in both Philadelphia and New York and

[13] MTL had a separate agreement providing for different and reduced terms of employment for its MSC vessels. Among other provisions, vacations for all licensed deck officers were given at the rate of 13 days' vacation for every 30 days worked.

[14] Although it may appear that MTL untimely withdrew from multiemployer negotiations, it must be emphasized that licensed deck officers are supervisors and that, under Sec. 8(a)(5) of the Act, an employer is obliged to bargain in good faith only with the representatives of its statutory employees.

[15] Among benefits that were reduced were vacation benefits. Under the tanker agreement, a master received 30 days of paid vacation for each 30 days worked; a mate, 27 for 30 days. Under the new package, all officers received only 13 days of vacation for 30 days worked, the same as in the agreement which covered MTL's MSC vessels.

discovery notices were outstanding as of the date of the close of the hearing in this proceeding.

On 15 June AMA also agreed with MM&P to extend its agreement. By letters dated 10 and 11 July, MOC notified AMA and MM&P, respectively, that AMA was not authorized to bargain for MOC with respect to any multiemployer collective-bargaining agreement with MM&P, but that AMA was authorized only to bargain with MM&P for an agreement on an individual basis for MOC. Thereafter, MM&P and AMA, representing only MOC, with MOC's representative also present, bargained for an agreement for MOC and met from July to 1 October. During the negotiations, MOC, on 14 September orally and on 18 September in writing notified MM&P that unless an agreement was reached by 1 October to replace the extension agreement, MOC would terminate its contractual relationship with MM&P; and when no agreement was reached, MOC on 2 October notified MM&P that its contractual relationship was terminated.

MOC thus joined not only MTL but also Keystone, Bulk Transport, and Gastrans. The latter two had notified MM&P by letters dated 1 October pursuant to their earlier advice of 29 September to the Committee, that the Committee was no longer authorized to bargain for them with respect to any collective-bargaining agreement with MM&P and that their agreement was terminated. By telexes and letters dated 27 September Keystone, too, had sent notices to MM&P and to the Committee containing the same message. In addition, on or about 27 September Keystone distributed a letter to its licensed deck officers notifying them, among other things, that it would no longer recognize MM&P as their bargaining representative and offering them continued employment with a changed and reduced wage and benefit package. On 1 October Bulk Transport and Gastrans distributed a similar letter to their licensed deck officers.[16]

Accordingly, by 2 October each of the Companies had withdrawn authority from its respective multiemployer association to negotiate on its behalf; each had terminated the collective-bargaining agreement under which each had been bound; each had notified MM&P that, after many years,[17] it would no longer recognize MM&P as the bargaining representative of its licensed deck officers; and each had notified its licensed deck officers that henceforth new terms and conditions of employment would prevail. On 2 October MM&P filed a lawsuit in the United States District Court for the Southern District of New York seeking a declaratory judgment that MOC was still bound to and required to perform its obligations under the extension agreement. At the time of the hearing in this proceeding, Cross-Motions for Summary Judgment were pending.

C. *MM&P Takes Action*

On 3 October Lowen sent telexes to all the Companies' vessels instructing its members, among other things, ''to immediately cease all work of any kind except for that involving security of vessel.'' Describing its actions as a ''job action,'' MM&P directed the officers to stop all work, including ''undocking, shifting, loading, discharging, cleaning tanks, ballasting, transferring of cargo, [and] performing administrative duties including clerical work of any kind.'' Its members were directed to ''remain on board to protect your jobs. If you are to retain the hard-won MM&P contract benefits, you must demonstrate your courage and willingness to comply with these instructions and refuse to leave your ship voluntarily.'' (Its members were later told that if they were on a foreign trip, they had a right to ''insist upon proper discharge before a U.S. Coast Guard or consular officer. If in U.S. port do not leave vessel unless forced off by U.S marshal or other credentialed officer armed with proper documents.'') MM&P described the job action as ''necessary to protect wages and benefits of not only MM&P members but ultimately those of all officers and crew members. . . . This job action is necessary to preserve your future.'' MM&P's members were requested to report the name of any officer not supporting the job action to international headquarters. Lowen's telex to MOC, with which it had been bargaining until 1 October, added that the job action would enable MM&P to achieve ''[w]hat we were not able to achieve through good faith bargaining.'' Lowen sent a telex to MM&P's pilots' group advising it of the job action and calling for the ''support of all pilot members, by withholding of services wherever possible . . . to insure these companies honor their obligations.''[18]

Finally, on 5 October, Lowen notified all MM&P offshore ports to contact all the Companies' permanent employees ''to stop the flow of replacements to the ships being affected by our job action.''

There followed in short order the refusal of the licensed deck officers to work, their rejection of the Companies' new terms and conditions of employment, and their refusal to leave the vessels voluntarily; picketing by MM&P's members with various signs; picket boat activity; some threats of violence; and threats of fines, fines, and charges against and trials of MM&P members who refused to comply with Lowen's directive.

D. *The Job Action and its Effects*

Consistent with Captain Lowen's 3 October directive, when the vessels of the Companies entered port on and after 3 October, many of the masters ordered their vessels to be berthed at safe landing places, sometimes not even at the berths where the vessels' cargo was to be discharged. But before then, port captains and various other representatives of the Companies scurried from ship to ship to offer licensed deck officers continued employment under the Companies' new wage and benefit packages, which provided on most vessels for, among other things, reduced wages and vacation benefits, and the elimination of one position of third mate (where a vessel had two third mates) and the position of a relief chief mate in port. Generally, before 3 October, the officers agreed to remain on their vessels. But, as seen below,

[16] All of these companies reduced the schedule of vacation benefits to 15 days for 30 days of work.

[17] Collective-bargaining agreements between MTL and MM&P covering MTL's licensed deck officers extended back for approximately 40 years; Keystone, 30 years; MOC, 20 years; Bulk Transport, 10 years; and Gastrans, 5 years. All were covered by the 1981 master agreement.

[18] These telexes were composed by and sent with the direct authority of Lowen. All telexes sent by MM&P were sent from the communications room of MM&P's international headquarters. That room was staffed by MM&P Officers and Representatives Swanson, Landry, Haa, Nereaux, Kyser, and Gras, who were authorized to draft and send messages and to sign Lowen's and Martin's names as MM&P's president and secretary-treasurer, respectively, so that it was clear that the telexes were ''official'' MM&P communications. All communications were authorized even if Lowen did not know about them.

once the vessel's officers had received Lowen's 3 October directive, they refused to perform any work, and they refused to leave their vessels voluntarily, even though in many instances relief crews had been hired and were available to assume the officers' duties.[19]

1. Keystone

Between 27 September and October 2, Robert McKeever, Keystone vice president, visited the following vessels and offered Keystone's new terms and conditions of employment to the vessels' masters and mates, who accepted them: *Valley Forge* in Decinto Port, near Houston, Texas; *Edgar M. Queeny* in Plaquemine, Louisiana; *Puerto Rican* in Oak Point, Louisiana;[20] and *Chilbar* and *Spirit of Liberty* in Corpus Christi, Texas. Other Keystone representatives visited other vessels prior to 3 October. The crews of the *Golden Gate* in Wilmington, California; the *Kenai* in San Pedro, California; and the *Tonsina* in Long Beach, California, accepted Keystone's new terms; but the chief and second mates on the *SS Atigun Pass* in Long Beach, California, refused the package, and they asked to leave the vessel and were replaced.

On 3 October, McKeever visited the *Keystoner* at the Paktank terminal in the Houston ship channel. He arrived at the vessel at 1 p.m. and began to talk with the master and the four mates, who were ''interested'' in what McKeever was describing to them. About 3:30 p.m. Lowen's directive arrived, and the master said, ''We have a problem.'' The master then asked to meet alone with his mates. Afterwards, he announced to McKeever that he intended to adhere strictly to the directive and that he was not going to leave the vessel unless relieved by a master sent from the MM&P hall with proper credentials. The officers similarly refused to do anything.

McKeever estimated that the vessel should have been discharged after 7 to 8 hours of pumping and should have set sail at about 10 p.m. to midnight that evening. Because of the master's advice, McKeever obtained security to ensure the safety of the vessel. McKeever asked the master to turn over the ship's money[21] so the ship's crew could be paid off, but the master refused to open the safe; and when McKeever asked for the combination for the safe, the master refused to give that, too. As a result, although the ship's payroll had already been prepared and the unlicensed crew members were ready to be paid off, McKeever found it necessary to ask the ship's agent to obtain another $35,000, which was in addition to the amount then in the safe, in order to pay off the crew. Shortly before 5 p.m., the master changed his mind and gave the money in the safe to Keystone's port captain.

Later that day, about 8 p.m., an attempt was made by a gauger to board the vessel and sample and measure the amount of the cargo in the vessel's tanks preliminary to discharging the cargo. The master refused to grant the gauger permission to board the vessel. The gauger tried again later and was again turned away. About 9 p.m., McKeever had arranged for a standby crew to replace the licensed deck officers who had also refused to work. McKeever's request of the current licensed deck officers to vacate the vessel about 9 p.m. was rejected. They said they were going to stay on the vessel. The master was formally relieved of duty by the replacement master. The other licensed deck officers were introduced to the new master, who ordered them to go to work, but they still refused and were discharged. The new master ordered them off the vessel and they refused. About 9:30 p.m. the new mates were put to work and McKeever called the police who came to his office about a half mile away about 11 p.m. A few minutes before 2 a.m. on 4 October, the local sheriffs offered either to escort the old crew off the ship or to arrest them. The old crew left under escort.[22]

The foregoing is illustrative of the reaction and acts of those MM&P members who decided to comply with Lowen's 3 October directive. The details of what happened on each vessel may have some passing interest but are not determinative of this dispute. Suffice it to state, on 4 October, McKeever returned to the *Spirit of Liberty*, which he had visited 2 days before, when all the then officers had accepted and signed on to employment under Keystone's new terms and conditions of employment. The vessel was still sitting in the same position, at the same terminal; and the master relied on Lowen's directive and stated that he intended to live up to it. The master and the mates refused to work and left the vessel at midnight, only after the master talked with the police, whom McKeever had called, and after the licensed deck officers were convinced that they were not leaving the vessel voluntarily and thus were complying with the Lowen directive.

On October 8, the officers of the *Petersburg* in San Francisco Harbor declined to work and were discharged. The second and one of the third mates refused to leave voluntarily, so Keystone was required to obtain a temporary restraining order in the United States District Court, Northern District of California, prohibiting them from, among other things, criminally trespassing on the vessel. The order was served on the two mates, who thereupon agreed to leave the vessel. The *Petersburg* was delayed from sailing for 8–12 hours.

The master of the *Chelsea* in Burkenhead, England, announced on 8 October that he had received Lowen's 3 October directive and that he intended to live up to that to the letter and to stay there until Keystone returned to the bar-

[19] The consolidated complaint alleges that the refusals of the licensed deck officers to work are instances of unfair labor practices and distinguishes between those occurrences which took place when relief crews were available and those when no relief crews had been hired. I find that the availability of a relief crew is not a material fact and have disregarded it in most of my findings.

[20] The chief mate was to get off the *Puerto Rican* at that port, but agreed to sail to Houston because the regular chief mate was late in arriving. The third mate changed his mind the next day.

[21] At the termination of a voyage, the master must pay off himself, the other licensed deck officers, and the unlicensed crew members. In addition, he must transfer to the relief master the ship's remaining money and documents, such as the vessel's certificate and papers relating to the vessel's condition and cargo. The process of the payoff and filling out various forms may last 1-1/2 or 2 hours.

[22] At other locations and on other vessels, time was similarly lost by reason of MM&P's job action. Of course, there was a delay which can be attributed only to the explanations by the representatives of the various Companies of the new terms and conditions being offered to the licensed deck officers, who then needed time to think over the offers. Nor do I blame MM&P, once the officers determined not to continue working, for the delay in their refusal to work. But the delay caused by their refusal to cooperate and leave the vessel and to carry out the functions which would permit them to do so, such as opening the safe and paying off the crew, is directly attributable to Lowen's directive to them not to do anything and to be escorted from the vessel only by U.S. marshals or local officials.

gaining table. The other mates similarly refused Keystone's new wage package. On 9 October, the officers were fired but would not leave the vessel unless paid off before a United States consul.[23] By 10 October, the officers through MM&P Representative Pat King,[24] were making demands about the propriety of the payoff, including a demand that they be paid through about 10 February 1985, when the vessel's foreign articles were to end, the full wages required by MM&P's agreement, and a demand that Keystone post surety both in England and the United States in anticipation of various lawsuits which were anticipated would be brought against Keystone. It was only very late on 10 October that the third mate left and a few hours later, on the 11th, that the other officers left the *Chelsea*. By that time, none of the lightering[25] that should have been finished by the vessel had been started.

On October 8, the mates of the *Kenai* in Valdez, Alaska, complied with Lowen's directive by doing no work and refusing to leave without police escort. Arrangements were made for the police chief to board the vessel and escort the mates from the vessel. Similarly, all the officers of the *Tonsina*, which docked in Valdez on 9 October, refused to perform any functions and reported to a Keystone representative that they were ''just going to sit there.'' All refused to leave unless under escort, and arrangements were made for the police chief to escort them off the vessel.

Jeffrey Miller, master of the *Chilbar*, received Keystone's package of wages and benefits on 1 October and he and the *Chilbar*'s four mates accepted those new terms. However, on 3 October, in Beaumont, Texas, he and the mates were advised of MM&P's directive not to work. Miller decided to continue to work, but the other four complied with MM&P's directive and would perform no work other than to stand security watch. Miller dismissed them all. They wanted to be escorted off the vessel by a local law enforcement agency, and arrangements were made for the local sheriff to board the *Chilbar* and escort them off.

On or about 4 October, the chief and second mates on the *Energy Independence* decided to comply with Lowen's directive, refused to work, and remained in their cabins. Initially, they also refused to leave the vessel unless they were arrested, but soon thereafter they changed their minds. While the vessel was at the Jamestown Anchorage near Newport News, Rhode Island, MM&P Representative Landry, asked the master and the mates on a short wave radio to ''go with'' the MM&P, that MEBA and NMU were going to support the MM&P, and ''if they didn't go with the union they'd be scabs, they'd be blackballed, they'd never work again.'' The second mate (who had been promoted from third mate) said that he would not be intimidated, and Landry threatened that if he did not join the job action, his legs would be broken.

On 11 October, McKeever visited the *Cherry Valley* in Dundee, Scotland, where all of its mates declined Keystone's offer, refused to work,[26] and refused to leave the vessel unless they were paid off before a United States consul, that being required under their understanding of Lowen's directive. However, the consul would not come to the vessel, and McKeever agreed to make a written statement in front of the consul that the mates did not leave the vessel voluntarily, an arrangement that was agreed to and ultimately carried out on the afternoon of 12 October.

2. MTL

The mates of the *Sealift Arabian Sea*, headed for a naval station at Key West, Florida, on 3 October, refused to work on arrival in port and, when they were discharged, the mates refused to leave the vessel unless arrested. A legal proceeding was instituted in the United States District Court in Miami to evict the officers from the vessel; and on the morning of 5 October, a United States marshal and some Navy security boarded the vessel, the marshal served the Federal court order, and the mates left the vessel. The vessel's operations were delayed a day, and MSC did not pay to MTL the charter rate for the period of the delay.

The master and chief and third mates of the *Sealift Pacific* near Seattle, Washington, determined on 5 October that they were going to comply with the Lowen's 3 October directive. When the relief master arrived, the old master stated that he would not depart the vessel unless presented with a legal document. Arrangements were made with MTL's local attorney to get a ''legal document''; United States marshals came to the vessel; and the document was served on the master and chief and third mates, who then left the vessel. The vessel was delayed about 2 hours in discharging its cargo because of the master's refusal to leave the vessel without legal order.

The second and third mates of the *Sealift Arctic* who were due to leave the vessel when it arrived in Martinez, California, on 26 October refused to work or leave the vessel because of MM&P's job action. They were advised that MTL was prepared to have a notice of hearing issued by a judge in San Francisco. One mate said nothing; the other demanded to be arrested and led off the vessel in handcuffs. Legal proceedings were commenced, a notice of hearing was signed, a Federal marshal was dispatched to the vessel, and the notice of hearing was served. On the marshal's advice, the two mates left the vessel.

3. MOC

MOC's new terms and conditions first went into effect on 2 October on the *Overseas Arctic* and the *Overseas Juneau*. From then on, as a vessel came into port and the ship's articles were terminated and there was a payoff, MOC instituted the new conditions. There were vessels on which it was contemplated that the new terms would not be instituted until

[23] According to Keystone's directions to its masters, payoffs in foreign ports on foreign articles were to be accomplished in the presence of a United States consul, if available. In general, this was not the prior practice for any of the Companies. Furthermore, Lowen's attempts to justify his unprecedented instruction that the masters and mates not leave their vessels unless forced off have no merit. If the instruction was intended to protect the master from false claims, it was demonstrated that the master receives a receipt for all property he gives to his relief master. In any event, the instruction was directed to all licensed deck officers, not merely the master. If the instruction was intended for those occasions when there might be a claim that the vessel was abandoned, the instruction was not limited to those situations, nor did Lowen indicate why this kind of situation would arise on foreign articles rather than on coastwise articles or why the instruction was not issued only to the last remaining officer on board to ensure that he would be relieved. Indeed, there were incidents related where the master had agreed to remain on the vessel, but mates refused to leave unless arrested.

[24] King was a retired MM&P member who was specially assigned by MM&P to certain tasks during the course of the job action.

[25] Lightering is pumping a partial load of cargo to a smaller vessel.

[26] The master was being relieved in that port, but he made it clear to McKeever that he was not doing any administrative work and that he was complying with MM&P's directive.

several months later. For example, the *Overseas Alice*, *Overseas Valdez*, and *Overseas Vivian* were in the Far East, and their articles were not scheduled to expire earlier than December 31.

As noted above, on 2 October, the licensed deck officers of the *Overseas Juneau* in San Francisco, California, accepted MOC's offer of new terms and conditions of employment. So did the master and chief mate of *Overseas New York* at the Ostricia Anchorage in the Mississippi River on 3 October. However, on 3 October, the master of the *Overseas Juneau*, on receipt of Lowen's 3 October directive, changed his mind, refused to work, and was discharged. On the *Overseas New York*, when the Lowen directive was received later in the day, the second and third mates complied with the directive, refused work orders, and were terminated. Later, on 10 October, when the *Juneau* arrived at its next port at an anchorage outside of Valdez, Alaska, all of its licensed deck officers refused to continue working.

As of 7 October, both the *Overseas Arctic* and *Overseas Washington* had been anchored at Chiriqui Grande, Panama, pursuant to the job action of the vessels' officers. The masters of both vessels stated that the vessels were remaining in their present positions and refused MOC's port captain's order to move the vessels to the loading buoy because of the MM&P's job action. All the other licensed deck officers similarly refused to do any work and insisted on being paid off in the presence of a United States consul. However, the consul was unavailable, and the officers ultimately agreed to accept their payoff without the consul being present.

The *Overseas Ohio* was moored at a platform about 20–25 miles offshore Louisiana early on 7 October, and the licensed deck officers refused to do any work and complied with Lowen's directive. A relief crew had been hired to replace the officers; but a further delay was encountered because MOC had to hire a private security firm to remove the three mates, all of whom were removed in handcuffs. (The harbor police refused to do so, stating that they had no jurisdiction over a vessel moored that far offshore.) The vessel was delayed from its cargo operations for many hours, finally arriving at the buoy to discharge the cargo on 8 October at 3 p.m.

The licensed deck officers of the *Overseas Chicago* anchored off Freeport, Texas, on or about 9 October refused an order to move the vessel to a lightering site and were terminated. The master of the *Overseas Natalie* on the same day, arriving at Southwest Pass, about 2-1/2 miles from the jetty entrance of the Mississippi River, refused to permit MOC's senior port captain on the vessel: ''No one will come aboard ship until the vessel has been cleared [by United States Customs] and particularly the scabs [the relief master and third mate].'' All the officers refused an order to ready the vessel for discharge, were terminated, and refused to leave the vessel voluntarily. A complaint was sworn out against the officers, a warrant issued, and a United States marshal and the local sheriff's personnel arrested the officers. The *Overseas Natalie* was delayed by the officers' refusal to voluntarily leave the vessel for about 12 hours.

On 9 October, the master of the *Overseas Alaska*, located near Freeport, Texas, advised MOC's port captain that all of the mates refused to work, and so new mates were brought to the vessel and permitted to lighter while the former mates stayed in their rooms. Thereafter, MM&P Representative Titus asked to see the former mates, and they left the vessel and went to the dock to meet with him. They then returned to the vessel and, after they were paid off, insisted that they be escorted from the vessel (even though they had just left voluntarily), and so arrangements were made for security officers from Burns International Security to do so.

On 8 October, the *Overseas Boston* arrived in Valdez, Alaska, to load crude oil. On the sides of the vessel were two signs: ''MMP ON STRIKE, AFL–CIO.'' The master refused to engage in loading operations and was fired, as were all the mates who supported the job action and refused to work.[27] After the officers had been escorted from the vessel, it was ascertained that, among other things, the ballast of the vessel was spread throughout all the tanks of the vessel, rather than consolidated in a few tanks as it should have been, and that the master had not reported such matters as the hydraulics being drained out of the hydraulic system and the vessel's gauging system being nonoperational. If a report had been made, arrangements could have been made to have technicians available to correct the problems. As it was, there was a 1-day delay in the *Overseas Boston*'s turnaround, at a daily charter rate of $50,000, which was not paid by the charterer.

As of 23 October, the *Overseas Marilyn* had been in a collision and was anchored in the Sabine River navigational channel, near Port Arthur and Beaumont, Texas. The MM&P officers refused to move the vessel, despite MOC's port captain's order to move the vessel to Orange, Texas, about 12 miles distant, based on his opinion that the vessel was not moored in a safe and secure location and that it was not at an approved anchorage because there were various heavily loaded vessels, tankers, and bulk carriers coming in and out and passing the *Marilyn*.[28] The mates also refused to leave the vessel voluntarily and were escorted off by United States marshals.

4. Mormac

On 4 October, the master and chief and second mates of the *Mormacsun* which was anchored on the Mississippi River about 10 miles below New Orleans, Louisiana, indicated that they did not desire to continue to work for Mormac under its new package and insisted that they would comply with MM&P's instructions and would have to be removed from the vessel by force or legal order. Earlier that day, the master had refused to accept a bunker barge and the vessel sat idle all day. Later in the day, all three changed their minds and decided to accept Mormac's terms. The third mate, who adamantly refused to continue in Mormac's employ, left the vessel on the morning of 5 October and was replaced late that evening. The following morning, the master and the two other mates changed their minds again. Arrangements were made to have replacements flown to New Orleans and they arrived about 5 p.m. on 7 October. A United States marshal arrived at 9:30 and threatened the master and two mates with arrest; they agreed to leave voluntarily with the marshal. The replacements were then brought aboard.

On the *Mormacsky* as of October 3 or 4, the master and two mates had determined to stay on the vessel under

[27] At the time the officers refused to work, they were still operating under the terms and conditions of the tanker agreement.

[28] I make no judgment as to whether the port captain's opinion was accurate; his order was disobeyed.

Mormac's new package, but soon the officers started to waver. By 5 October, the chief mate was uncertain but leaning toward the MM&P, and the two other mates were going to comply with MM&P's 3 October directive. Later that day, the chief mate joined the two other mates. By 6 October, the master changed his mind, too, and refused to move from his ''safe anchorage'' to another anchorage in St. Thomas, as directed by Mormac.[29] Finally, on 8 October, the master succumbed to the conflicting pressures of Mormac and MM&P and determined to proceed to San Juan, Puerto Rico, ''to have this labor dispute resolved.'' On 9 October in San Juan, the three mates refused to work, to sign off articles, and to leave the vessel unless a court order was served or arrests were made. Arrangements were made for the local police to escort the mates off the vessel within a few hours. They were replaced, as was the master, who ultimately asked to be relieved. The vessel left port on 11 October. While the vessel was docked, there were pickets on land and a picket boat picketing the vessel.

In October, the *Mormacstar* was on charter to the MSC in Diego Garcia, an island in the Indian Ocean about 1000 miles south of India. As a result of advice from the MSC that the master of the vessel refused to engage in naval exercises on a Tuesday in early October, Mormac telexed the master asking that he reconsider his position and engage in fleet exercises, barring which Mormac would take such action as it deemed appropriate, including license revocation. The master maintained his refusal; and on 10 October, Nicholas Telesmanic, Mormac's director of labor relations, left from New York with a new master and three mates, arriving in Diego Garcia on 14 October. Telesmanic introduced the new master, Captain Sensky, to the old one, Captain Giachetti, to whom he said that the mates were to sign off shipping articles. The mates said they wanted to sign off under protest and before a United States consul. Before they could be paid off, the replacement mates also indicated that they would refuse to work. As a result, Telesmanic had to arrange for a second crew of new mates. Giachetti left the vessel on 15 October with the replacement mates. The original mates refused to engage in fleet exercises on 15 and 16 October but were willing to stand security watch until their replacements arrived, which they did on 20 October. On that day, the old mates were paid off before the Navy commodore, acting as a vice consul. During this period, the vessel was taken off charter, because it was refusing to comply with commodore's instructions.

E. *Picketing and Related Activities*

In addition to the actions taken by the licensed deck officers aboard their vessels, pickets supported the job action on land. Although no witness recalled precisely what was the legend of the picket signs in various ports during the first half of October, some remembered that the signs indicated that it was the MM&P which was protesting and that in most cases members of the MM&P, not strangers, were picketing. In addition, other witnesses were able to recall that, of the variety of signs, some protested ''job action''; others, ''unfair labor practices'' and ''substandard wages and vacations.''[30]

Lowen testified that about the end of the second week or the beginning of the third week of October (shortly after the first charge in this proceeding was filed), the job action ended. He realized at that time that MM&P members who had complied with his 3 October directive (about 65–70 percent) had been terminated and that too many other MM&P members were not honoring his directive and had agreed to the Companies' new packages and remained on their jobs. There was thus nothing that could be accomplished by the job action which was then disbanded, and MM&P attorneys were instructed to prepare language to protest the Companies' ''substandard'' wages and other working conditions. By that time Lowen had received and analyzed all of the Companies' new packages, and he testified that he directed that all of the ports be informed of the language to be used on MM&P's picket signs from that time forward.

I have difficulty finding that such an instruction was issued. MM&P Representative Haa testified that the language of the sign, prepared by Burton Epstein, international counsel, was posted in the communications room and that, when persons called from the ports and asked what the signs should state, the language was read to them. I find it probable that that is what happened, especially because the signs used were not uniform. Whether others were told the same thing as Haa is another question. MM&P Representative Landry did not know what should be placed on the sign and told the Boston strike committee to ask counsel in Boston what to put on the sign. It is strange that no one consulted with international counsel about the matter. All the circumstances lead to the conclusion that Lowen made a decision not to have uniform picketing, because telexes were sent asking all ports to report on the type of picketing which was being conducted by the ports and by individuals and pensioners. I thus find that MM&P encouraged other kinds of picketing, while now attempting to disavow the consequences of that picketing.

The sign used by MM&P to protest substandard conditions took several forms. They contained a space for the insertion of vessel's name and some read as follows:

> WE PROTEST THE SUBSTANDARD WAGES, VACATION & WORKING CONDITIONS BEING PAID THE LICENSED DECK OFFICERS ON THIS VESSEL BY THIS COMPANY. WE HAVE NO DISPUTE WITH ANY OTHER VESSEL OR ANYONE ELSE AT THIS SITE. MM&P/ILA AFL/CIO.

(I refer to this sign as the ''substandard sign.'') Other signs referred solely to the wages, vacations, or working conditions being paid by the company, without reference to the conditions on the vessel; and still others referred solely to the wages, vacations, and working conditions being paid on the particular vessel. A form of the substandard sign was used at many locations during the period from about mid-October through 15 January 1985, when MM&P's picketing was en-

[29] The master asked MM&P whether to comply with Mormac's directive; MM&P replied that the ''vessel should not be moved for convenience of owner.''

[30] The picketing took place at Keystone's Golden Gate on 10 October in Wilmington, California; Keystone Canyon on 11 October in Long Beach, California; and Kenai in Long Beach on 15 October. MM&P port agent Bara telexed Lowen and Martin that a ''four-man rank & file informational picket line'' had been established at the Renai.

joined by court order.[31] However, the sign was not consistently used, and it was used in connection with other activity which is claimed to be illegal under the Act. What follows is the evidence of the picketing. MM&P contends that, other than picketing with the substandard signs, the picketing was not authorized by it, but I conclude otherwise, particularly because the evidence demonstrates that the signs were paid for by MM&P, were prepared at the MM&P halls by MM&P members, ofttimes supervised by an MM&P representative, and authorized by one of MM&P's strike committees, as appears to be the case in most instances.

These strike committees were constitutionally authorized and were organized in or about June in anticipation that the dry cargo negotiations, which paralleled the tanker negotiations, would not be successful. (Lowen termed these ''job action committees''; Martin said they were called ''strike committees'' for want of a better name.) When the dry cargo negotiations were successful and the agreed-upon contract was put to a vote of the MM&P membership, the strike committees were deactivated; but they were activated again on 3 October. Under MM&P's offshore work rules, which is a part of MM&P's constitution, the committees' duties were ''to establish picket lines and otherwise make the strike complete and effective.'' Accordingly, the committees coordinated all of the job actions on the vessels and supervised the picketing, including preparing lists of persons to picket and times of picketing, establishing (pursuant to the international's decision) the number of times that members had to picket in order to qualify for the right to ship through MM&P's hiring hall, and keeping records of who picketed; they prepared picket signs; they sent messages to licensed deck officers, instructing them to observe the work stoppage[32] and fining them and threatening them with fines and removal of their right to ship through the MM&P hiring hall; their picket line expenses for coffee and gasoline were paid for out of the port's petty cash fund; their mailgrams, telexes, and telephone calls were made on MM&P's equipment and paid for by the international;[33] they incurred expenses and were reimbursed by the international for the hiring of picket boats. If anyone knew the purposes of MM&P's job action and picketing, surely MM&P's representatives and strike committee chairmen did. Various statements and printed picket signs, even if sometimes not arguably reflective of the international's wishes, are attributable to MM&P, and no others. MM&P's representatives and strike committee chairmen acted for MM&P, and no one other. I conclude that the committees were actually empowered to represent MM&P in the general area in which they acted and that MM&P is responsible for the committees' acts and statements. *Bio-Medical Applications*, 269 NLRB 827 (1984); *Longshoremen ILWU Local 6 (Sunset Line)*, 79 NLRB 1487 (1948). To the extent that MM&P did not disavow or correct the various statements, of which it had knowledge, see, for example, *Broadway Hospital*, 244 NLRB 341, 349 (1979); *Meat & Allied Food Workers Local 248 (Milwaukee Meat)*, 222 NLRB 1023 (1976), enfd. 571 F.2d 587 (7th Cir. 1978).

[31] On 15 January 1985, a 10(j) injunction was entered on consent in the United States District Court for the District of Maryland enjoining MM&P from engaging in the conduct alleged herein as violative of Sec. 8(b)(1)(B). Earlier, on December 19, MM&P agreed to cease all picketing directed against MTL.

[32] Martin testified that the committees were authorized to instruct members to observe the job action.

[33] At no time was any request made of the senders of the documents to reimburse MM&P because the transmissions were unauthorized.

1. MTL

The *Marine Duval* on 16 October was in Tampa, Florida, where it was discharging molten sulfur. It was picketed by a picket boat with about 5–6 signs as well as 5–6 persons with picket signs (and another 10 persons, including John Hunt, co-chairman of the Tampa strike committee) at the entrance to the terminal. The signs read:

S/S MARINE
DUVAL
UNFAIR TO M.M.& P.
PENSIONER DEPENDENTS
& SURVIVORS
PROTEST ACTION BY
MARINE
TRANSPORT
LINES
THREATENING LOSS OF
OUR HEALTH & PENSION
BENEFITS[34]

At the entrance on 16 October, Purdy, a Tampa strike committee co-chairman and an MM&P representative,[35] told an MTL representative (whom he did not know to be such) that MTL was being unfair to the MM&P, to the pensioners, to the men on board the vessels, and to both survivors and dependents who were relying on the pensions. The pickets (but less in number) and the picket boat remained on 17 October. The pickets with signs reading the same as above were also there on 22–23 October, and the picket boat was at the vessel on 23 October.

MM&P also picketed the following MTL vessels with the substandard sign protesting the wages, vacations, and working conditions paid by MTL, as follows: 18 October, *Sealift China Sea*, New Orleans, Louisiana; 19–22 October, *Marine Chemist*, Jacksonville, Florida;[36] 26–29 October, *Chemical Pioneer*, Tampa, Florida; and 27 October, *Marine Duval*, Tampa, Florida. In addition, pickets with the substandard sign complaining of the wages, vacations, and other benefits paid on the vessel by MTL and a picket boat picketed the *Marine Chemist* on 16–20 November in Long Beach, Richmond, and Pittsburgh, California.

[34] In addition to the fact that the strike committee co-chairman participated in this picketing, I note that MM&P had requested on 14 October daily information on any ''job actions'' taken against the Companies' tankers and such information ''should include informational picket lines, pensioner actions or informational demonstrations and individual information picketing.'' Clearly, MM&P anticipated that there would be various kinds of protests; and there is an implication that it encouraged the very type of picketing, the consequences of which it now seeks to avoid.

[35] G.C. Exh. 90, testimony taken in the 10(j) proceeding, persuades me that, when MTL's new terms and conditions were being presented to the licensed deck officers of the *Marine Duval*, MM&P's attorney and Purdy, who was introduced as an MM&P representative, were present to explain MM&P's position. I find that Purdy was such a representative and discredit any testimony to the contrary.

[36] A picket boat bearing the same signs was also present during the entire period.

2. Keystone

During early October, up to 20 persons, including members of the relief crew[37] and two mates who had left the vessel, gathered around the Keystone gates to the *Energy Independence* on various dates and in various locations. On 10 or 11 October individuals distributed handbills at Brayton Point and distributed handbills on numerous other occasions during the remainder of October. The first two distributed earlier in October were in handwriting. One, directed to members of the MMU and MEBA, and signed by the MM&P strike committee, complained that MM&P's contract had been terminated by Keystone, which had fired its union licensed deck officers and hired scabs and finks to work in their place; and, if this is allowed to go unchallenged, ''*your wages & benefits will be cut too*.'' The second, signed by ''Rank & File Members MM&P,'' complained of a lockout by Keystone and other companies involved herein as an ''arrogant attempt . . . to unilaterally roll back the hard earned gains MM&P has earned over the years'' and stated that members of the United States maritime unions are disturbed that the Companies' action signaled similar action against the unlicensed seamen. It ended:

> This is why MM&P has been forced to take this job action. We must protect our contracts, restore our job rights and preserve our benefit plans upon which our pensioners depend for their future well-being.

Toward the end of October, the rank-and-file members distributed another flyer, this time two typed pages, consisting of an urgent plea to the other waterfront unions to help stop the Companies' union busting conduct. Another one was distributed by the rank-and-file members of Wilmington, California. This complained that many shipping companies previously contracted to MM&P ''are now offering wages drastically below Union scale as well as cuts in vacation of more than half.'' The earlier flyer alleged that the Companies ''are paying the crews remaining on board much more money than they offered us. So they will remain on board for now.''[38] The second handbill appealed for help from the other maritime unions and pilot membership groups.

Picketing of the *Energy Independence* did not commence until 27 October at Brayton Point. The signs read:

PROTEST
NEPCO
AND
KEYSTONE
UNFAIR
TO LICENSED DECK OFFICERS
OF S/S ENGERGY INDEPENDENCE
SUBSTANDARD WAGES
AND
BENEFITS

A second sign was almost identical, but the last two lines were replaced by the legend ''EXPERIENCED UNION OFFICERS FIRED & REPLACED BY INEXPERIENCED MATES.'' On the same day, the pickets distributed to the union members aboard the various ships a telex from the AFL–CIO which offered ''all possible assistance to your picket lines and strike demonstrations [sic] [to protest the tanker companies'] flagrant attempt to bust your union and destroy the conditions of employment of licensed deck officers which have been built up over the past fifty years.''

On 1 November, a four- or five-man MM&P picket line, which included crewmembers of the *Energy Independence*, was posted at various sites at the Salem facility. The signs protested, among other things, that MM&P had been locked out by the unfair labor practice of Keystone and NEPCO and that MM&P protested Keystone's lockout of union mates and deck officers and replacement of them by inexperienced nonunion mates. The *Energy Independence* was also picketed by a picket boat staffed by ex-*Energy Independence* officers, first in Salem on 5 November and again on 8 November. The boat then had on it professionally printed signs which one witness recalled as stating that MM&P protested Keystone and New England Power as unfair. I find that these are the same as signs ordered and paid for by the Boston strike committee. Introduced in evidence were bills for printed protest signs on which MM&P protested Keystone's and Nepco's ''Unfair Labor Practices and Lockout'' and protested the ''Substandard Wages, Benefits, and Working Conditions'' being paid the officers of the vessel. These same printed signs were also used on 17 November at Brayton Point. Picketing of the vessel also took place in Norfolk on 5–6, 10–11, and 14–15 November. The record does not indicate what sign was used, but the local strike committee there explained that MM&P was trying to break Keystone's lockout.

Picket boats were active. Captain Miller testified that in mid-October, when the *Chilbar* was in Baltimore, a 34-foot white sport fisherman, with a placard on the side of the boat ''MMP PROTESTING'' came along the side of the *Chilbar* as it was docking, and from the boat Miller heard: ''Miller, we'll be on the dock. And Miller, we will get you.'' Picket boats picketed the *Golden Gate* first in mid-October and up to early December, in Anacortes and Tacoma, Washington, and Portland, Oregon. Persons on the boats carried the substandard sign. In Portland, particularly, persons on the boat attempted to persuade tugboat pilots not to aid the Golden

[37] The *Energy Independence*, a coal carrier, was under contract to New England Power Company (NEPCO) and delivered coal to Salem and Brayton Point, Massachusetts, and picked up coal from Norfolk, Virginia; Baltimore, Maryland; and Philadelphia, Pennsylvania. On an average in October and November, the vessel would make a delivery twice a week. The vessel's crew operates on rotation—one crew works for 45 days while the other crew is on vacation for that period, and then they switch.

[38] There appears no record support for this statement.

Gate. Similarly, on 8 November, MM&P Representative Landry successfully persuaded the captains of two tugboats not to service the *Energy Independence.*

On October 19, MM&P pickets, including an alternate to MM&P's strike committee, near the *Chilbar* in Baltimore, Maryland, did not carry signs containing the area standards language. Rather, all were headed by MM&P's professionally printed name and affiliation and complained: ''JOBS! JOBS!!! JOBS!!!! STOP UNION BUSTING'' and ''PROTESTING!!! SCAB FINK MATES ON THIS VESSEL'' and ''ARE YOU NEXT? NMU??? MEBA??? UNION BUSTING!!! SUPPORT US!!!'' and ''55 CHILBAR USES SCAB & FINK DECK OFFICERS.'' Miller saw pickets in Baltimore in mid-November carrying signs with MM&P's name on top and using the words ''fink'' and ''scab.'' One sign, introduced in evidence, stated: ''PROTESTING!!! SCAB LABOR & FINK LABOR.''

On 23–24 October, at the Union Oil facility in San Pedro, California, two to five persons picketed the Petersburg with signs that said: ''WE MASTER, MM&P MEMBERS SUPPORT THE ACTION OF OUR UNION MEMBERS WHO REFUSE TO VIOLATE UNION PRINCIPLES AND WERE FIRED FROM THEIR JOBS.'' and ''WE FELLOW MEMBERS OF THE MASTER[S], MATES AND PILOTS SUPPORT THE ACTION OF OUR UNION MEMBERS IN REFUSING TO VIOLATE PRINCIPLES OF UNIONISM OF AMERICA.'' The MM&P pickets of the *Puerto Rican* on 22–24 October in Wilmington, California, and the *Keystoner* in Long Beach and Wilmington had the same or similar signs.

On Thursday, October 25, the pleasure craft *George Meany*, hired and paid for by MM&P, with pickets paid for by MM&P, carrying MM&P's substandard sign and sounding a siren and airhorn and with its crew shouting, followed the *Puerto Rican* for 2 hours as it headed for Alameda, California.[39] When it arrived about 12:15 or 12:20 p.m., at the Encinal terminal, a container facility, the crew of the picket boat had already embarked and two of them, including Scott Fuller (Fuller), owner of the boat and son of MM&P Assistant Port Agent Don Fuller Sr. in order to prevent the vessel from docking, removed the *Puerto Rican*'s spring lines which had been secured on the dock.[40]

Later, about 1:30 p.m., when the ship attempted to tie up, members of the picket boat's crew stated that they were not going to let the ship tie up, that the ship was a ''scab ship,'' and the ship's officers were ''all scabs,'' and that the NMU would be the next to go. The *Puerto Rican* started to pull out of its slip, but a lawyer for Keystone yelled to bring the ship back. An officer went back down to the pier with some unlicensed crewmembers and one of the picket boat's crewmembers said ''[I]f you all tie up this ship we're going to close this terminal down.'' Although the vessel's crew tied down most of the lines, the captain changed his mind and ordered the lines to be let go. Two of the pickets threatened the second mate, Charles Ebersole ''[W]hen you get off that ship you'll never work again.'' Still later, they said, ''[Y]ou'll never work again when you get off that ship and we'll see to that.'' And later Fuller added: ''[I]f you tie up this ship we're going to shut down this ship and we're going to burn this ship across the way'' and, in answer to the chief mate, ''You'll be dead tomorrow. We'll get you. We'll fuck you in the ass.'' These comments were made in the presence of unlicensed seamen.

The *Puerto Rican* never docked that day. On Friday afternoon, it made another attempt to dock, although the *George Meany* had stayed with the *Puerto Rican* all day. During the docking procedure, the *George Meany* positioned itself under one of the lines and between the vessel and dock and was cautioned to get out of the way. Fuller made a gun with his hand, and, pointing at Ebersole, mouthed, ''I'm going to get you,'' in the presence of unlicensed seamen. That evening Fuller threatened an able-bodied seaman: ''We're going to get you. We are going to get your kids too. We have got your number . . . [i]f you come on the dock, you better carry a gun.''

The following day, 27 October,[41] the picket boat stayed near the *Puerto Rican*, patrolling up and down from the stern to midships and, several times, proceeding at a high rate of speed as though it would ram the vessel, only to throw the engine in reverse just before hitting the vessel—again, in the presence of licensed and unlicensed personnel. Later, in the early afternoon, while Ebersole was standing watch on the bridge, Fuller pointed a finger at him, saying, ''[Y]ou, we're going to get you. You're not safe anywhere. We've got longshoremen on both coasts. We're going to get you Gambino style, if you know what I mean.'' Still later, he said, ''I'm going to make sure this ship doesn't leave here. I'm going to go get some scuba gear and come back here after it gets dark and make sure of that.''

On October 28, while the *Puerto Rican* was at the Paktank facility in Richmond, California, Fuller asked Bob Jobe, Paktank terminal manager, why they did not give the jobs back to those whom they belonged. Fuller then threatened that if the vessel was still at the terminal the following day, there would be a picket line up. On October 29, after the *Puerto Rican* had discharged its cargo, the vessel sailed for the Union 76 dock in Richmond. For most of the voyage, it was followed or preceded and often impeded by the *George Meany*, which frequently positioned itself between the tug and the *Puerto Rican*, which the tug was attempting to assist. When the vessel finally got to the dock, one of the pickets yelled to the dockworkers that: ''[W]e've got a picket line up here. You shouldn't be working. If you guys continue to work we'll have 150 longshore pickets outside your plant.'' While the *Puerto Rican* was tying up at the dock, Fuller was also tying up the *George Meany*. Keystone Attorney Pantoni was there; and Fuller twice made as if he were shooting the lawyer, as did another of the Meany's crewmen. At 2 p.m., that crewman said to Ebersole: ''[Y]ou, we got your number. We're going to get you.''

The *George Meany*'s picketing was not limited to the *Puerto Rican*. In late November, the *George Meany* circled the *Golden Gate* for 3 days as it was berthed at the Amoco dock in San Francisco Bay. On November 30, the *George Meany* was tied to a navigational buoy approximately 100 or 150 yards off the *Golden Gate*, then berthed at the Land Sea terminal in Martinez, California. There was also picketing on land in Martinez, the pickets carrying not only the substandard sign but also one that stated:

[39] The events involving the *George Meany* and the *Puerto Rican* on 25–29 October are also alleged to have violated Sec. 8(b)(1)(A) of the Act.

[40] Also seen on the *George Meany* on one occasion was MM&P Vice President York and Representative Wilson.

[41] That day, Lloyd Martin, MM&P's secretary-treasurer, and Don Fuller Sr. came to the slip where the Puerto Rican was docked and had their picture taken on the picket boat with the other pickets.

TO OUR BROTHERS
IN M.E.B.A
DO NOT LET YOUR LEADERS
MAKE FINKS AND SCABS OF YOU
WHY ARE YOU HELPING TO
DESTORY M.M.&P. AND
SIMULTANEOUSLY VIOLATE
THE JURISDICTION OF THE
I.L.W.U.???
WHEN YOUR TURN COMES, WHO WILL BE
THERE TO HELP YOU???
SIGNED YOUR FORMER SHIPMATES
M.M.&P.

Finally, almost daily from early November until early January, pickets (some wearing jackets and caps with the emblem of the MM&P school on them) appeared before Keystone's main office in Philadelphia. These pickets, who were assigned to picket duty by both the Philadelphia and Baltimore strike committees, carried handprinted signs which read:

KEYSTONE SHIPPING AND KURZ ''FAMILY'' PINK SLIPS HAVE SINK SHIPS (SS PUERTO RICAN)[42] PUT COMPETENT DECK OFFICERS BACK ON YOUR VESSELS	CHAS KURZ & ADOLPH KURZ LOCKED OUT THEIR LOYAL EMPLOYEES OF MANY YEARS. WHY HAVE YOU ABANDONED YOUR LOYAL AND FAITHFUL DECK OFFICERS.
KEYSTONE SHIPPING CHARLES KURZ I AND ADOLPH KURZ HAVE LOCKED OUT THEIR DECK[43] OFFICERS BECAUSE OF UNION AFFILIATION	ADOLPH & CHAZ. KURZ (KEYSTONE SHIPPING) ONE MAN IS DEAD (S.S. PUERTO RICAN) HOW MANY MORE WILL DIE? PUT YOUR LOYAL, COMPETENT DECK OFFICERS BACK ON YOUR SHIPS.
CHAZ KURZ I (KEYSTONE SHIPPING) ADOLPH KURZ HOW MANY MORE MUST DIE? PUT COMPETENT, LOYAL EMPLOYEE'S [SIC] BACK ON YOUR SHIPS (OFFICERS OF THE SS PUERTO RICAN)	UNION DECK OFFICERS HAVE BEEN LOCKED OUT BECAUSE OF UNION AFFILIATION STOP UNION BUSTING BY ADOLPH & CHARLES KURZ
CHARLES KURZ & ADOLPH KURZ LOCKED OUT THEIR LOYAL EMPLOYEES OF MANY YEARS. WHY HAVE YOU ABANDONED YOUR LOYAL LONGSTANDING FAITHFUL DECK OFFICERS IOMM&P AFL–CIO	KEYSTONE SHIPPING WHY ARE YOU INVOLVED IN UNION BUSTING (MASTER, MATERS & PILOTS)

[42] The *Puerto Rican* sank on November 2.

[43] McKeever testified that this word was ''Loyal,'' but my reading of the exhibit indicates otherwise.

3. MOC

On 10 October, the *Overseas Chicago* was picketed in Texas City, Texas, with signs protesting that the MM&P was ''locked out'' of MOC. On 15 October, the *Overseas Washington* was picketed in Texas City, Texas, with signs protesting that MM&P officers had been ''locked out in violation of contract.'' At another dock in Texas City, the *Overseas New York* was picketed with the same professionally prepared signs.[44]

From 17 to 23 October, the *Overseas Juneau* was engaged in lightering in San Francisco Bay. On 19 October, the *George Meany* remained around the vessel for over an hour.[45] The following day, the *Juneau* was being piloted to Venicia and was to be aided by three tugboats. Someone from the *George Meany* identified himself on the pilot's radio and said: ''Do not dock the ship, the ship is hot.'' The pilot replied that he had passed a certain point and was committed to navigate the Carquinez Straights and required tug assistance. The tugs replied that they would not handle the vessel. MOC Port Captain Richard Satava then announced that ''they'' were endangering the safe navigation of the vessel, which needed the assistance of the tugs. The reply was: ''Be advised that this a picket. The Juneau is hot.'' It was also announced that the persons were acting under the instructions of Don Fuller of the MM&P and that the vessel should proceed to ''Anchorage 25.'' Satava, having been advised that Anchorage 25 was too small for a vessel of the size of the *Juneau*, especially without tug assistance, told the picket boat: ''I do not know who Don Fuller is, but I do know that Captain Lowen, President of the IOMMP has given instructions to MMP members not to endanger the safe navigation of the vessels. At this time you are doing so.'' Finally, the tugs gave their assurance to divert the vessel to another anchorage which was not its original destination, and Satava proceeded to make other arrangements for the *Juneau* to be taken to its original destination.[46] At some point while the *Juneau* was at the anchorage, it had to be moved so that another vessel coming down the channel could safely pass. Tugs came to the *Juneau*'s assistance, but the *George Meany* remained alongside one of the tugs while it was pushing the *Juneau*, so as to limit the tug's maneuverability.

Finally, the *Juneau*'s charterer determined that instead of sending the vessel to its original destination, it would return to another anchorage and finish its operation by lightering. The next day, 21 October, arrangements had been made to fuel and bunker the *Juneau* at its anchorage by barge. The *George Meany* cruised near the barge, its crew calling people ''finks'' and ''scabs'' and one saying: ''You're not even going to have a job in another week. Why are you doing this? None of you are qualified to pump that barge.'' Satava called for the Coast Guard to prevent this harassment, and that was temporarily successful; but the *George Meany* came back to the bunkering barge, its crew yelling, making ob-

[44] The picketing was authorized by the MM&P representative in Houston. The ''strike chairman'' referred to the picketing as ''informational picket lines.''

[45] The conduct involving the *George Meany* and the *Juneau* on 19–21 October is also alleged to have violated Sec. 8(b)(1)(A) of the Act.

[46] Satava took pictures of the *George Meany*, which he testified carried signs reading: ''Masters, Mates & Pilots, Locked Out in Violation of Contract.'' Expenses for picketing the *Juneau* on 19–24 October were paid for by MM&P.

scene gestures, and shaking their fists. The pickets convinced an engineman to leave the barge and his employment. The *Juneau*'s return to Valdez was delayed 2 days.

On 22 October, in Port Arthur, Texas, the *Overseas Alaska* was picketed with the same signs complaining of a lockout as those carried against the *Overseas Washington* and *New York*, except that these signs were printed by hand, whereas the earlier signs had been typeset. On 24 October, signs complaining of a lockout were carried by pickets at the *Overseas Ohio* on the Sabine River between Port Arthur and Beaumont, Texas. On 25 October, similar signs were used in Texas City where the *Overseas Chicago* was berthed; on November 5 and 6, similar signs were used in Texas City where the *Overseas Ohio* was docked;[47] on 7–8 November, in Freeport, Texas, three persons picketed the *Overseas Arctic* with signs protesting a lockout; and on 13 November, at Texas City, the same kind of sign was used when the *Overseas New York* was berthed there. On 13 November in Texas City, Texas, where the *Overseas New York* was berthed, the MM&P pickets handed out leaflets aimed at members of other unions and implying that the replacement of MM&P officers with ''nonunion scabs at roughly half-pay and benefits'' was being condoned ''by your own union,'' that such ''brazen anti-union activity'' must have been preceded by much ''advance planning and promises,'' and that the other union members might also be replaced.[48]

On 31 October, two C&O tugboats and later two McAllister tugboats refused to assist *Overseas Harriette*, honoring the picket line set up by two picket boats which carried MM&P's substandard sign. The pickets yelled: ''Don't help the scab outfit with the ship.'' Later, the pickets yelled to the *Harriette*'s crewmembers that the SIU was going to be next. Pickets were also stationed at the entrances to the C&O terminal. The next day, one of those pickets was asked what the dispute was about. The reply was that ''this company was not honoring their contract. They're hiring scabs and we're tying up their ships all across the nation.''[49]

On 3 December, MOC's corporate headquarters in New York, New York, was picketed by MM&P. Ed Gras, MM&P New York port agent, stated to a security officer for a bank in the same building that ''he was here to picket not the bank but to sway the people in the building so that we can get our jobs, get some jobs back.''

In addition, MM&P picketed the following vessels of Overseas on the dates and at the ports listed below, using signs that protested substandard wages and vacations being paid by MOC:

11/13	Overseas Chicago	Empire, Louisiana
11/13	Overseas New York	Texas City, Texas
11/18	Overseas Alaska	Baton Rouge, Louisiana
11/28	Overseas Alaska	Empire, Louisiana
12/1	Overseas Artic	Baton Rouge, Louisiana

[47] MOC's port captain asked the pickets what they were doing there: ''one replied,'' these guys took our jobs.

[48] Added to this mimeographed sheet, in handwriting, was: ''Do You Still Believe That Jessie Calhoon [MEBA president] is Acting in your best interests?''

[49] Although unidentified, this same picket picketed the Overseas Washington in Baton Rouge, Louisiana, in the first few days of January 1985.

MOC also picketed the following vessels with signs which complained of substandard working conditions or benefits paid on the particular vessel:

10/31–11/13	Overseas Washington	Baton Rouge, Louisiana
11/28	Overseas Harriette	Philadelphia, Pennsylvania
11/30	Overseas Artic	Alliance, Louisiana

Finally, MM&P picketed the following vessels on the following dates with signs protesting substandard wages, vacations, benefits and/or working conditions paid by MOC:

10/31–11/1	Overseas Harriette	Newport News, Virginia
1/14	Overseas Alaska	Mereaus, Louisiana
11/21	Overseas Ohio	Texas City, Texas
11/21	Overseas Arctic	Empire, Louisiana
11/24	Overseas New York	Corpus Christi, Texas
11/30	Overseas Arctic	Alliance, Louisiana
2/13	Overseas Ohio	Baton Rouge, Louisiana
2/14	Overseas Natalie	Alliance, Louisiana
12/7	Overseas Chicago	Texas City, Texas
12/9	Overseas Alaska	Mereaux, Louisiana
12/10	Overseas New York	Empire, Louisiana
12/16	Overseas Arctic	St. Rose, Louisiana
11/28	Overseas Harriette	Newport News, Virginia
1/3	Overseas Washington	Baton Rouge, Louisiana
11/3	Overseas Arctic	Alliance, Louisiana

F. *MM&P's Charges and Fines for Failure to Comply with Lowen's Job Action Directive*

Under the MM&P's constitution and by practice, if a member wants to file a charge against another member, he files his charge with the office of the secretary-treasurer. Martin testified that he does not review the merits of the charge because he would be a part of the appellate body that would rule on any appeal. That is a rather strange practice in light of MM&P's offshore work rules which provide that if the general executive board believes that the charges have no merit, the charges shall be dismissed forthwith. In any event, Martin testified that his secretary sends the charge to the charged member by registered mail at the member's last port of registration (or if there is no record of his previous registration, the port closest to his home address) and instructs that port to elect a trial committee at its next membership meeting. The trial committee then holds a formal hearing and issues a written decision, which is sent to the secretary-treasurer. If there is an appeal, the order of appeal is by the international subcommittee, then the general executive board, and then the MM&P's convention, which is held every 2 years. If members sought to resign their membership—and there were many such members—and if there were charges pending, Martin had a form letter that advised the members that acceptance of their resignations would be inappropriate because charges were pending.[50] All the

[50] Such a form letter was sent to one MM&P member for whom no record of a charge could be found. It is a good question whether, in certain instances, charges had been filed before certain resignations were rejected. For example,

Continued

charges were still pending at the time of the hearing, and the internal union proceedings were stayed as a result of the 10(j) injunction proceeding. I find, therefore, that the resignations have still not been accepted.

Various telexes reveal that MM&P was more than casually interested in which of its members were violating Lowen's 3 October directive, as demonstrated by the directive itself, which asked that the names of all officers who failed to comply with the directive be reported to international headquarters. Other telexes asked for the same information; others asked for the names of replacement officers; others threatened the imposition of fines; and still others instigated the commencement of internal union proceedings.[51] On 13 October, Martin forwarded to all strike committees and port representatives detailed instructions about the filing of charges, including a sample form of a charge;[52] and Martin noted:

> The strike committee may fine a member found in violation of current tanker job action up to a maximum of five hundred dollars and recommend repeat recommend that charges be filed against the member providing for a further fine or penalty if found guilty of such charges.[53]

On 14 October, MM&P requested all its offshore ports to supply daily information about various aspects of the job action and advised that: ''Strike committees should be taking appropriate steps to file charges against members or applicants who have finked on their brother union members.'' Charges patterned after Martin's sample[54] were filed against the following employees of MTL: Fernando Alonso, master; Gerald P. Carroll, master; Matthew E. Fisk, second mate; Harlan E. Jackson, master; Gerald L. Johnson, master; Stephen G. McDonald, third mate; Julius L. Perkins, master; Louis E. Schwager, chief mate; Ronald C. Young, master; against the following employees of Keystone: Russell P. Aims, master; John A. Albrecht, second mate; James Blattner, second mate; Albert E. Hoyle, master; Thomas Malanchuk, master; Jeffrey Miller, master; James C. Spillane, master; Constantinos Vafiades, second mate; Kazimierz A. Wodka, master; Neal R. Wood, chief mate; William J. Murphy, master; Hamilton G. Thomas, port captain; against the following employees of MOC: Vernon D. Adkison, second mate; William A. Gillespie, chief mate; Clifford E. Hoglund, master; James Holt, chief mate; Albert Lapalme, master; Arthur G. Laquiere, master; Edward P. Reichhelm, chief mate; Hubertus Von Rettberg, master; Frederick S. Wanamaker, master; Edward Welch, chief mate; Richard Satava, port captain; and against Lars W. Lund, a master employed by Mormac.

Fines were levied against both active licensed deck officers and management personnel of MOC and Keystone. It may be helpful to highlight the conduct of one Captain John Hunt, the chairman of the trial committee in Tampa, Florida. It may be that Hunt may charitably be characterized as overzealous; at the same time, MM&P not only did not reprimand him for his actions but also aided his pursuit of the those who violated the 3 October directive. For example, MOC Vice President of Operations Robert Johnston received a telex from Hunt, dated 12 October, advising that at 1500 hours on that day the Tampa trial committee found that he violated MM&P's constitution by refusing to honor Lowen's directive and fined him $1500, plus a daily fine of twice his daily pay, $600, for each day he continued in ''non-compliance.'' Another telex was sent to Johnston on the same day—a corrected copy—in which the $1500 fine was reduced to $500 and the title of trial committee was changed to strike committee. No explanation for these amendments was offered by MM&P, but counsel for the General Counsel offered a Martin notification dated 13 October to Howard Hull, an MM&P representative but designated as ''representative Tampa strike committee,'' in which Martin stated that the 12 October telex about Johnston[55] contains a ''very serious error,'' that the reference to ''trial'' committee should be changed to ''strike,'' and that a copy of the corrected telex should be sent to MM&P for verification. I conclude that, although the dates do not agree, the second 12 October telex was transmitted as a result of the Martin instructions of 13 October. According to the record, the fines have never been rescinded. However, later, on 7 November, Martin forwarded a charge against Johnston alleging, among other things, that he failed to register for picket duty by 12 October.

MOC Port Captain Jack Craft received the same kind of telex, dated 12 October, and punishment[56] from Hunt as Johnston did in the second telex directed to him. On 15 October, the telex was corrected to read ''strike'' committee instead of ''trial'' committee. On 10 November, Craft also received a charge from Martin which had been filed by Hunt under date of 12 October alleging that Craft had failed to follow Lowen's directive. By letter dated 23 October, Craft and Johnston appealed and asked that the decisions of the trial committee be immediately vacated and the charges against them dismissed. Martin says that he never saw the communication. Whether he did or not, letters which Martin signed were sent to both indicating that their letter had been referred to the trial committee for its consideration and action. The appeal was never considered.

Johnston resigned from MM&P by telex dated 16 October, but Martin in a letter dated 18 October refused to accept the resignation because charges were pending against him. Yet, the charges against Johnston were first served on him with a letter from Martin, dated November 7.

[51] See for example Jt. Exh. 51, a telex dated 10 October, to MTL master Gerald Johnson stating that, because he refused to honor the directive, ''Strike committee has been advised to commence trial procedures. . . . See also Jt. Exhs. 56, 57, 71, and 73.

[52] Another set of instructions, with the draft language slightly amended, issued on 20 November, long after the job action allegedly had ended and the area standards picketing allegedly had commenced.

[53] The provision of the MM&P constitution which allows for a fine of $500 is captioned, ''Failure to Stand Picket Duty'' and states:

> All members shall be required to do picket duty, subject to reasonable rules uniformly enforced.
>
> A member who fails to perform such picket duty shall be subject to a fine or removal from any or all employment lists and/or removal from membership.
>
> The amount of such fine or the period of such removals shall be determined by the Trial Committee.
>
> Pending trial, the applicable Strike Committee shall have the authority to remove such a member from the various Shipping Lists and/or to levy a fine not to exceed five hundred ($500.00) dollars.

[54] The charges alleged that the member failed to support and comply with an officially ordered ''job action sit down strike'' by MM&P in a bona fide dispute with the employer, violated the duties and responsibilities of members to MM&P, and failed to uphold and abide by his obligation of loyalty to his fellow members and to MM&P, thereby jeopardizing the hard won wages and benefits of all members and pensioners.

[55] This also refers to Craft, Lapalme, and Carroll, discussed below.

[56] The daily fine was not specified, but was twice Craft's daily pay.

A fine similar to that against Craft was issued by Hunt's strike committee on 29 October against MOC Port Captain William H. Adams. In addition, charges were filed against MOC Port Captain Richard Satava on 15 October (''failure to follow [MM&P's] stop work instructions''), Keystone Port Captain Hamilton G. Thomas on 12 October (''failed to follow [MM&P's] stop work instructions [by asking] 2nd mate Robert O. Reinhart if he was going to continue work with Keystone as a nonunion man''), and Mormac Personnel Manager David Lentz (''incited or influenced another member . . . to disregard the shut down, stop work instruction of [MM&P] and fink out aboard the SS Mormacsun setting a disloyal example to other members aboard other vessels approaching port and jeopardizing the hard won wages and benefits of all members and pensioners'').

Ample evidence appears in the record that Johnston is a grievance adjuster at MOC's highest level and is a collective bargainer, having negotiated agreements with all the unions for the vessels' personnel, except the radio officers; that Craft, Adams, and Satava are actively engaged in grievance adjustment; and that all are 8(b)(1)(B) representatives of MOC. The General Counsel argues that I should infer, from their titles and the responsibilities of persons holding similar titles, that Thomas and Lentz are 8(b)(1)(B) representatives of their employers. I will so find.

In addition to the foregoing, a greater number of fines and charges concerned licensed deck officers. On 12 October, Hunt's Tampa trial committee, later strike committee, fined Gerald Carroll, master of MTL's *Marine Duval*, $500, plus twice his daily pay, for refusing to honor Lowen's directive.[57] The strike committee also sent mailgrams containing the same fines to the following employees: on 15 October, Arthur G. Laquiere, MOC master; and Albert F. Lapalme, MOC master; on 17 October, Matthew E. Fisk, MTL second mate;[58] Gerald L. Johnson, MTL master; Stephen G. McDonald, MTL third mate;[59] Clifford E. Hoglund, MOC master; James Holt, MOC chief mate; Edward P. Reichhelm, MOC chief mate; and Frederick 5. Wanamaker, MOC master;[60] on 29 October, Julius C. Perkins, MTL master; Vernon D. Adkison, MOC second mate; and William A. Gillespie, MOC chief mate; and on 31 October, Hubertus Von Rettberg, MOC master.[61]

MM&P's trial (not strike) committee in Nederland, Texas, was not inactive, either, issuing on 10 October 10 fines of $500 each, plus daily fines of double the employee's daily base pay, for noncompliance and each day of continuing noncompliance with Lowen's directive, to the following: Gerald P. Carroll, MTL master; Matthew E. Fisk, MTL second mate; Stephen G. McDonald, MTL third mate; Wayne Nason, MTL chief mate;[62] Jeffrey Miller, Keystone master; Michael G. Miller, MOC chief mate; James C. Spillane, Keystone master; Kazimierz A. Wodka, Keystone master; C. Jordan, Keystone third mate; and Charles Ebersole, Keystone second mate.

There were other strike committees which issued ex parte fines. The Boston strike committee fined Lars W. Lund, Mormac master, on 11 October and Thomas Malanchuk, Keystone master, on 16 October, $500 and suspended each from MM&P's shipping list. The strike committee in Jacksonville, Florida, on 2 November rendered a similar fine against Neal R. Wood, Keystone chief mate. On 9 and 10 October, the Baltimore strike committee rendered fines in unspecified amounts against Edward P. Reichhelm, MOC chief mate, and Clifford E. Hoglund, MOC master, respectively, and suspended them from MM&P's shipping list. The Norfolk strike committee fined the following officers 1 day's pay for each day they worked their vessels which were affected by MM&P's ''work stoppage:'' on 8 October, Harlan Jackson, MTL master; on 10 October, William J. Murphy, Keystone master; and on 11 October, Ole Tangen, Keystone master, and Ronald C. Young, MTL master.

Martin was aware that trial and strike committees were fining MM&P members without holding hearings. Martin explained that he thought the procedure ''was highly irregular [and] improper and [instructed] that no attempt should be made to enforce these fines.'' But of all the hundreds of documents which were offered in evidence at the trial, these instructions were impossible to find. All Martin issued were instructions to the various ports as to the proper manner of preferring charges. At the hearing, Martin disowned MM&P's constitutional provision which authorized a strike committee to levy an initial fine of up to $500 without a hearing, stating that ''[i]t has never been used.''

He did not advise the various MM&P members to disregard the fines but, in the letters that accompanied the charges forwarded to them, he asked them to call him if they had any questions. My review of Martin's letters indicates no such advice. The final paragraph of the form letter merely stated: ''Please contact the undersigned upon receipt of this letter so that an appropriate time may be selected to proceed with the hearing on these charges.'' A member could not reasonably assume that because a hearing was going to be held, earlier fines against him could be disregarded. Even if the quotation may be read to have a bearing on the earlier fine, the letter is wholly inadequate in rescinding and expunging the fine which illegally issued.

Martin also testified that a telex was sent to the ports instructing them of the proper procedures to filing charges and advising them that ''no one would be fined or proceeded against without being afforded a full and fair hearing.'' The instructions do not contain the advice to which Martin testified, and I discredit his testimony. Furthermore, I note that the Tampa trial committee fined MTL Master Gerald P. Carroll without a hearing, that Carroll appealed the fine on the ground that the procedural requirements of the MM&P constitution were not followed, that the appeal was directed to

[57] The letter to Carroll containing the fine and signed by Hunt, as chairman of the trial committee, has a handwritten note stating, ''copy sent prior your 14 Oct telex.'' I find that the reference to the telex was Martin's new instruction that fines be issued only by the strike committee. Carroll was fined not only by Hunt's committee on 12 October but by the Nederland, Texas (port of Port Arthur) committee on 10 October. See also G.C. Exh. 233, referring to the fine issued to Albert F. Lapalme.

[58] Fisk was also fined by MM&P's trial committee in Nederland, Texas, on 10 October.

[59] McDonald was also fined by MM&P's trial committee in Nederland, Texas, on 10 October.

[60] G.C. Exh. 230 is a mailgram from Hunt fining Gregory L. Grosso in the same manner as the other officers. There is no indication of his position or employer.

[61] The record indicates that Fernando Alonso, MTL master, filed on 2 November an appeal from a fine imposed by the Tampa trial committee, but there were no documents produced to show the nature of the ''disciplinary action,'' if any.

[62] G.C. Exh. 208 indicates that Nason was not an MM&P member, but only an applicant for membership. Martin testified that MM&P had no jurisdiction to fine a nonmember.

Martin, and that Martin, who could have called a meeting of the international subcommittee to immediately reverse the fine, did not do so but left the fine standing.[63]

In sum, Martin asked only that MM&P members should call him to set up a hearing date. If they called, he testified, he would advise them that the earlier fines were null and void. But, even believing his testimony, he told only four people who called him. Otherwise, he never communicated with the members nor did he ever communicate with the chairmen of the trial (or strike) committees, one of whom he knew personally, to tell them to stop issuing their fines. Indeed, a cursory examination of some of the committees' notices to members, all of which Martin's office received, should have indicated to him that the ''trials'' were setups, and that there was no way that five trials could have been conducted at the same time.

In addition to all of these fines rendered by strike committees without hearing on notice, trial committees in numerous instances held hearings on notice, after charges had been filed and served, and fined the following:

Name of Member	*Employment*	*Trial Date*	*Fine*
Harlan E. Jackson	MTL master	3 December	$3,263.27[64]
William J. Murphy	Keystone master	14 December	$25,000, plus $250 per day for future noncompliance
Ronald C. Young	MTL master	14 December	$25,000, plus $250 per day for future noncompliance
Edward P. Reichhelm	MOC chief mate	19 December	$5,000, plus all wages earned from October 3 and plan contributions
David L. Erickson	Keystone employee[65]	27 December	$25,000, plus daily base pay and plan contributions for future noncompliance
James Farnham	MTL master	27 December	$500
Clifford E. Hoglund	MCC master	28 December	$25,000, plus daily pay and plan contributions for future noncompliance
Antonio D. Teixeira	Mormac master	28 December	$25,000, plus daily pay and plan contributions for future noncompliance
Neal R. Wood	Keystone chief mate	4 January 1985	$30,821.19
Edward Welch[66]	MOC chief mate	8 January 1985	$5,000 per month beginning 25 October, continuing as long as Welch works on non-MM&P contracted vessels
Constantinos Vafiades	Keystone second mate	14 January 1985	$22,228.57, plus daily fines based on the computations used to determine principal fine

Finally, there have been numerous other charges filed which have not resulted in trials, except for one instance where a trial was held and was adjourned without a date.

Charges have been filed against the following MM&P members who continued to work for Keystone as licensed deck officers after 3 October:

Name	*Classification*	*Date Charge Filed*	*Date Charge Served*
Ralph F. Elroy, Jr.	master	23 October	2 November
Timothy F. Hayes	master	20 November	30 November
Leo Johnson	master	20 December	31 December
Ole Tangen	master	17 October	21 November
John W. Mattfeld	master	21 November	27 November
Michael H. McCabe	chief mate	15 December	20 December
Stephen Papacostas	chief mate	20 December	31 December
Steven Rathkopf	unknown	8 November	20 December
David R. Smith	chief mate	20 November	27 November
Gordon Springer	second mate	29 November	31 December
John J. Strunk	master	15 October	7 November
Leonard J. Svetin	master	15 December	20 December
Henry Wilbert	unknown	8 November	20 December
William F. Moran	master	7 December	20 December

Charges have also been filed against the following MM&P members who continued to work for MOC as licensed deck officers after 3 October:

[63] Martin sent the appeal back to the trial committee.

[64] Jackson appears to be the only MM&P member who pleaded guilty. Omitted from the amount of the fine was an additional fine for a violation of the collective-bargaining agreement.

[65] In light of $25,000 fines being imposed against masters, I infer that Erickson was a master.

[66] Welch submitted his resignation from MM&P on 7 November. Although the record does not indicate, I assume that his resignation was treated pro forma and was rejected. The fine levied against him will, by its terms, continue as long as he works on non-MM&P contracted vessels.

Name	*Classification*	*Date Charge Filed*	*Date Charge Served*
David Chalson	chief mate	unknown	11 December
Earl L. Cross	chief mate	unknown	1 January 1985
Joseph Haffey	chief mate	unknown	11 December
William W. Harkness	chief mate	unknown	11 December
Charles Laine	master	unknown	11 December
Robert Thompson	master/observer	14 January 1985	14 January 1985
Cecil Smith	master	unknown	11 December

Charges have also been filed against the following MM&P members who continued to work for MTL as licensed deck officers after 3 October:

Name	*Classification*	*Date Charge Filed*	*Date Charge Served*
Ray L. LaRocque	third mate	10 December	unknown
Robert P. Ruse	master	20 November	27 November
Richard Marcus	master	16 October	20 November
Bernard O'Hagan	chief mate	25 October	2 November
Stephen Bourdeaux	third mate	31 October	unknown
Richard B. Moran	master	6 November	26 November
Anthony Black	chief mate	3 January 1985	15 January 1985
Thomas Jacobsen	second mate	3 January 1985	15 January 1985
William McFadden	master	3 January 1985	15 January 1985
Frank Mangus	master	unknown	11 December
Malcolm Triche, Jr.	master	unknown	11 December

Finally, a charge was also filed on 21 November against Steven J. Williams, a Mormac master and chief mate. The charge was served on 28 November.

Pilots were also included in the internal union proceedings. As found above, on 3 October, Lowen issued a directive to the pilot-members that they should not work the vessels that were being struck. On 9 October, Loyd H. Newton was requested by the chairman of the Norfolk, Virginia strike committee not to work the *Energy Independence*. On 24 October, Newton was charged with having violated on 7 October the ''stop work instructions'' by piloting the *Energy Independence*, and, even after he received the 9 October letter, continuing to work. A trial committee heard the charges on 3 December, and Newton was fined $10,000 and an additional $3000 for each voyage that he continued to make. Interestingly, the finding of guilt was based solely on Newton's actions of allegedly piloting the *Energy Independence* on 27 November in Norfolk, long after the job action had allegedly ended.

In a mailgram dated 16 October, the Boston strike committee, without a hearing, fined David Galman $500 and suspended him from the MM&P's shipping list. The day before, Galman was charged by the chairman of the committee with piloting a Keystone vessel beginning on 10 October. On 27 December, a trial committee fined Galman $10,000 for violation of, among other things, the work stoppage order. Keystone management was advised that both Newton and Galman were charged and later fined by MM&P.

Finally, a special report, dated December 4, issued by Don Fuller Sr. referred to the fact that MM&P's Pacific Maritime Region was drafting charges against Pilots Russ Nyborg and Mike Sweeney for crossing offshore picket lines. Testimony indicated that not only did MM&P threaten to fine them but also did so. Nyborg had told Captain Pinder that Nyborg and Sweeney were being fined $500 daily as long as they continued piloting vessels.

G. *The Legality of the Job Action*

The most immediate object of MM&P's 3 October directive was that MM&P's members, the then employed licensed deck officers, should discontinue all work for the Companies, except for the safety and security of the vessel. The message was clear: the licensed deck officers not only were not to load and discharge their vessels but also were not to prepare payroll vouchers *or adjust grievances*. Quite literally, they were not to do the work entrusted to them by the Companies to be their 8(b)(1)(B) representatives, under threat of internal union discipline. The job action thus was intended to be and had as its object a restraint and a coercion on the Companies that those who followed the directive would no longer serve as the Companies' grievance adjusters. The ancillary objects of the job action were that the Companies would fire the licensed deck officers because they refused to work and that MM&P would cut off the supply of replacements in order to stop the Companies from operating. Obviously, the directive had at least a partially desired effect: officers who had agreed to remain employed by the Companies under their changed wage and benefit packages within the few days before 3 October changed their minds after receipt of Lowen's directive, refused to work, and were terminated.

I have little question that MM&P's job action was taken in response to the Companies' walking out on their collective-bargaining and contractual relationships which had existed for up to 40 years. Nor is there little doubt that the job action was called because MM&P found the new wage schedules, coupled with the vacations and other reduced terms of work, offensive to the highest scale that MM&P had built up over many years. On the other hand, these reasons were not the only reasons for MM&P's response. Various

communications, written, prepared, and authorized by Lowen, and other communications sent by MM&P, indicate that, among the reasons for the job action, MM&P desired to get the jobs back for its members, to obtain recognition of it by the Companies, and to obtain a contract. In so finding, I have not credited much of Lowen's testimony.

I found Lowen's explanation of his motivation for calling a job action circuitous and lacking candor, especially his first answer, later often repeated, that it was ''[t]o get the attention of the companies.'' I found that rather cute and evasive. When the licensed deck officers are asked to cease all activities, anyone would assume that that would attract someone's attention, particularly the attention of the Companies. Lowen followed that by adding to his first answer that he wanted to have the Companies ''sit and talk with us,'' while denying that he wanted the Companies to recognize that they had a existing contract with MM&P. That, according to Lowen, was the subject of legal actions, and the purpose of the job action could not possibly duplicate the purpose of the lawsuits, a result which I find irrational and illogical; especially because, if MM&P already had a contract with MTL and MOC, what was the purpose of ''sitting down and talking'' with them, if not to convince them to recognize that such an agreement existed. It could be that Lowen wanted to persuade the Companies that he was willing to make a deal with them: he testified that he recognized that times had changed and he probably could not obtain as favorable conditions as were contained in the tanker agreement. He also wanted to ''continu[e] the relationship that [MM&P had] had with [the Companies] before.'' So he wanted to get the attention of the Companies to ''make sure that they understood that there was certainly a need for them to reconsider the actions that they had taken,'' although there was no indication that he was willing to settle for any terms less than what he had offered MOC when negotiations broke down. Finally, when asked whether MM&P wanted the Companies to return to the bargaining table, Lowen exhibited a bit more candor: ''we'd be fools not to want that.'' From all of this, MM&P's memorandum of law now admits that the job action was commenced to obtain recognition.

But I find that more was involved and find support in what Lowen and others wrote in October.[67] Lowen's 3 October job action directive stated that MM&P members should remain on board ''to protect your jobs [and] to preserve your future.'' A 4 October telex urged the officers of the *Overseas Washington* not to ''weaken your resolve to protect your jobs, wages and benefits.'' A 5 October telex, reporting on actions taken by MM&P members on other vessels, commented: ''With such courage and determination . . . continued ashore and afloat the IOMM&P will succeed in restoring its membership to their rightful jobs and conditions.'' Another 5 October telex urged deck officers to ''stand firmly together'' ''to successfully protect not only our jobs, wages and benefits but ultimately those of all officers and crewmembers.'' Communications on 3 and 7 October asked for support to retain MM&P ''contract benefits'' and ''working conditions.'' On 8 October, Lowen stated that the licensed ''deck officers are engaged in a legitimate job action to combat companies' unilateral decision to destroy their wages, benefits and job protection.'' On 25 October, Lowen sent to all ports a telex adopting a letter from AFL–CIO President Lane Kirkland, who stated that the Companies ''are engaged in a flagrant attempt to bust your union [and b]y replacing qualified licensed deck officers of the MM&P with scabs, they are putting at risk the safety of these ships and crews.''

At least one goal of the job action was to regain the licensed deck officers' positions for members of MM&P who had been fired when they refused to accept the new wage packages of the Companies. Lowen testified that a purpose of the job action was the same as the objects of MM&P's federal counterclaim and was to require MTL, among other things, to reinstate the MM&P members who had been replaced by non-MM&P members after 15 June. The prospect of the loss of jobs would obviously hurt the MM&P. With the contractual provision of its tanker agreement requiring that each master receive 30 days of vacation for every 30 days worked, each master's job is worth full-time employment for two MM&P members. Each mate's job, with 27 days of vacation, is worth full-time employment for almost two MM&P members. The Companies' reduction of vacation benefits by almost half greatly reduced job opportunities for MM&P members. In addition, the Companies' new terms and conditions eliminated a third mate's position on many vessels and the position of a relief chief mate in port. Without those jobs, MM&P faced greatly reduced membership and job opportunities. This is the reason that it was critical for MM&P to protest the Companies' actions to ''protect [MM&P's] jobs and it was critical to pinpoint vacations as a specific substandard provision of the Companies' newly changed working conditions. This is the reason that the Companies' acts were later complained of by MM&P as a ''lock out.'' As MM&P Representative Gras explained, MM&P was merely trying to get some jobs back.

The jobs which MM&P sought to protect would have no importance to MM&P unless certain terms of employment went along with the jobs. Otherwise, it was not necessary for MM&P to protest at all. As the directive and the above correspondence shows, the action was also taken ''to retain the hard-won MM&P contract benefits'' and ''to protect your . . . wages and benefits.'' MM&P Representative Haa testified that the purpose of the job action was to ''protest our loss of the contracts.'' Lowen's telex to the commander of MSC was to the same effect, that MM&P's members were prepared to quit the job action when the Companies ''live up to their obligations,'' the Companies having unilaterally terminated MM&P's contracts. The most persuasive evidence of MM&P's motive was its insistence that MTL and MOC had not properly canceled the tanker agreement and so were bound by it for at least another year, as is demonstrated by

[67] To establish MM&P's intent, it is fair to examine the totality of MM&P's conduct and all the pertinent circumstances, *NLRB v. Teamsters Local 182*, 314 F.2d 53, 58 (2d Cir. 1963); including statements of its representatives and strike committee chairmen and statements from persons on the picket line, *Longshoremen ILA Local 1291 (Trailer Marine)*, 266 NLRB 1204, 1207 (1983), enfd. 738 F.2d 423 (3d Cir. 1984); picket sign language and correspondence, *Electrical Workers IBEW Local 453 (Southern Sun)*, 252 NLRB 719, 724 (1980); and statements made at union meetings ''by agents of respondent or persons acting in concert with [them], ''*Retail Clerks Local 1357 (Genuardi Supermarkets)*, 252 NLRB 880, 886 (1980). This becomes all the more warranted because these external indications of MM&P's intent mirror the intent of the 3 October directive as well as numerous communications sent by MM&P and its leadership. Again, as pointed out above, the international received copies of many of the documents relied on here and asked for information regarding all picketing activities. It never disclaimed (or, at least, I have not credited testimony regarding disclaimers) any of the documents or the signs or the fines, but acquiesced in all of them.

MM&P's institution of legal actions, alleging that both employers had valid and binding agreements with MM&P.[68] In any event, Lowen belatedly admitted that he would have been delighted if the job action had resulted in the Companies' resuming collective-bargaining negotiations. Indeed, a MM&P telex confirmed that any tanker company not involved in the job action had either signed an agreement or was negotiating in good faith. Thus, a part of MM&P's motive was recognitional, to continue negotiations as the representative of the licensed deck officers.[69]

MM&P also desired to prevent the destruction of ''job protection.'' One ''job protection'' in the tanker agreement, as well as a ''contract benefit'' and ''working condition,'' is the requirement that licensed deck officers be referred to the Companies from MM&P's exclusively run hiring hall. That provision would require the Companies to hire only from the MM&P membership rolls which would restrict the Companies in their designation of persons to be hired as officers of their vessels.[70] Another ''job protection'' stems from the designation of certain officers as ''permanent'' so that they can return to their positions after their vacations. In either event, an agreement would be a requisite, and an agreement required recognition.

Finally, throughout the record, there are references to what appears to be a pervasive problem, MM&P's pension fund. As the 3 October directive notes, the job action was also called ''to preserve your future,'' which I find, if not to preserve jobs for MM&P members, was an attempt to hold the Companies to their continued participation in and contribution to the MM&P plan.[71] Some pickets protested the Companies' failure to participate in the plan as detrimental to the rights of pensioners to receive their benefits. That was a sticking point in the MM&P negotiations with MOC, and the amounts that the Companies finally determined to contribute toward their own officers' retirement benefits constituted only a small portion of what MM&P was requiring of its contracted companies. On the other hand, the Companies' failure to continue to contribute to the MM&P plan—which would require a written agreement under Section 302(c)(5) of the Act and thus, recognition—put the onus on MM&P's contracted employers to make up in their contributions what was being lost by the Companies' walking away from MM&P.[72]

To recapitulate, MM&P sought to replace the Companies' licensed deck officers with officers who were affiliated with MM&P, to gain recognition from the Companies as the representative of the officers, and to obtain a contract which would restore some or all of the wages and other benefits previously attained by MM&P. These goals are strikingly similar to MM&P's goals in prior Board proceedings in which MM&P was found in violation of Section 8(b)(1)(B) of the Act.

MM&P's present legal dilemma has its origin in *Masters, Mates & Pilots (Marine Corp.)*, 197 NLRB 400 (1972), enfd. 486 F.2d 1271 (D.C. Cir. 1973), cert. denied 416 U.S. 956 (1974). The dispute involved the container vessel *Floridian*, which was operated by a company which had a collective-bargaining agreement with MM&P for the ship's master and three mates. The operator went bankrupt and a new company, Marine and Marketing, was formed to recommence operations. In order to cut costs, it signed a prehire agreement with MEBA, covering all licensed deck officers and engineers. MM&P threatened to picket and then picketed the vessel in order to force Marine and Marketing to break its contract with MEBA, to fire the newly hired MEBA master and mates, and to replace them with the formerly employed MM&P master and mates.

The Board found a violation of the Act. First, it found that the master and the three mates were authorized and empowered as part of their duties to adjust grievances among the crewmembers. Second, it found that MM&P's picketing constituted restraint and coercion envisioned by Section 8(b)(1)(B). Third, it found that the object of the picketing was to require Marine and Marketing to replace the MEBA master and mates with a master and mates belonging to MM&P. The literal language of Section 8(b)(1)(B) was thus applicable: MM&P exercised coercion to require Marine and Marketing to change its selection of individuals whose duties included the adjustment of employee grievances. The Board rejected MM&P's claim that its object was legitimate and its conduct therefore permissible, noting that, while the preservation of unit work is a legitimate union goal, a labor organization is clearly not free to utilize any means it chooses in order to achieve a desired result. The Board found that MM&P's conduct was proscribed by Section 8(b)(1)(B) of the Act and ordered it to cease and desist therefrom.

The District of Columbia Circuit enforced the Board's Order. It rejected MM&P's argument that, when Congress enacted Section 14(a) of the Act and thereby deprived supervisors (including grievance adjusters) of the protection of the Act, Congress intended to allow supervisors to resort to self-help to protect their interests. Although noting that the legislative history may well be read as evidencing a Congressional purpose to permit supervisors to resort to self-help,

[68] The filing of a Sec. 301 action for a declaratory judgment that employers are bound to recognize and bargain with a union has been found to evidence a recognitional object, *National Maritime Union (Overseas Carriers)*, 174 NLRB 216 (1969); the filing of an 8(a)(5) charge has been found as evidencing a recognitional object, *Carpenters (Shepard Marine)*, 195 NLRB 530, 531 (1972); and the invocation of representation case procedures has been found inconsistent with a disclaimer of a recognitional object, *Amalgamated Meat Cutters Local 340 (PFA-Farmers Market)*, 232 NLRB 111, 116–117 (1977).

[69] See Jt. Exh, 25, in which it is noted that certain crewmembers of a vessel were sympathetic to MM&P's ''struggle for representation.''

[70] At the last negotiating session between MM&P and MOC on 1 October, MM&P agreed to MOC's proposal that it would hire from any source it wanted, in exchange for a union security provision that a licensed deck officer would have to become an MM&P member within 60 days of hire and an agreement that MOC would continue to contribute to MM&P's fringe benefit plans. Contrary to MM&P's contention, there is no proof, only surmise, that, because it was willing to give up its hiring hall for MOC, it was similarly willing to relinquish all rights to its hiring hall for all the other employers. However, MM&P has entered into a number of agreements containing hiring hall provisions, so it is clear that MM&P wanted to retain that form of ''job protection.'' And, if it did not, under MM&P's interpretation, the phrase ''job protection'' would have little meaning. Of course, MM&P's retention of its hiring hall and maintenance-of-membership provisions would limit the selection of 8(b)(1)(B) representatives to a class composed solely of MM&P members. *International Typographical Union (American Newspaper)*, 86 NLRB 951, 957–959 (1949), enfd. 193 F.3d 782, 805 (7th Cir. 1951), modified in other respects 345 U.S. 100 (1953).

[71] See Tr. p. 2992.

[72] In addition, the Companies' ability to hire older licensed deck officers might be limited by the fact that MM&P's pension plan vests only after 10 years. An older officer might not wish to work for the Companies if he was not assured that he would receive some sort of pension. Furthermore, under the MM&P pension plan, an officer may not work and receive his pension at the same time. He might be willing to forgo the MM&P pension plan for the right to receive his pension, while continuing to work. Those impediments of MM&P's plan were removed in the Companies' employment package.

that applies only to unions which are not labor organizations, that is, that represent only supervisors who are not statutory employees. MM&P, however, is a labor organization within the meaning of the Act (as MM&P admits that it is in this proceeding). Therefore, even though MM&P's efforts sought to protect jobs of its supervisory members, that did not remove MM&P, which also admits to membership statutory employees, from the restrictions of Section 8(b) of the Act. The court agreed with MM&P's contention that Congress intended to permit supervisors to resort to self-help, but it found that a supervisors' union cannot have it both ways. If it allows statutory employees to participate, it becomes a labor organization entitled to certain of the protection of Section 8(a) and subject to the restrictions imposed by Section 8(b) on such organizations. If it does not allow statutory employees to participate, it is not a labor organization and is freed of the 8(b) restrictions.

The court then addressed MM&P's argument that Section 8(b)(1)(B) was concerned solely with attempts by a labor organization to change the person utilized by the employer to adjust the grievances of members of that same organization. Although finding some evidence that Congress' primary concern was with situations falling within MM&P's interpretation of the Act, the court found nothing showing that Congress intended not to reach conduct of the sort that took place in that case. If anything, Congress simply did not address itself to the specific problem that arose there, and the court found no reason to create a case-by-case exception to the lines seemingly strictly drawn by Congress.

Masters, Mates & Pilots (Westchester Marine), supra, 219 NLRB 26, similarly involved an attempt by MM&P to disrupt the collective-bargaining relationship between MEBA and employers for their supervisory licensed deck officers. The MEBA contract required manning of the vessels with a master and three mates, whereas MM&P's contract required manning by a master and four mates. In addition, there was a wage differential favoring the MEBA contract. One of the vessels involved in the dispute was picketed by MM&P whose signs complained that the vessel ''work[ed] its deck officers under lower standards than those worked under by deck officers represented by Masters, Mates and Pilots.'' The second vessel was picketed with a sign which stated that the vessel was ''unfair to the Masters, Mates and Pilots.'' That vessel was picketed 3 months later with the first sign quoted above complaining of lower standards.[73]

The administrative law judge concluded that the picketing of both vessels fell under the literal prohibition of Section 8(b)(1)(B) because one object of the picketing was to force replacement of the MEBA-represented licensed deck officers with others represented by MM&P. Although he found that MM&P had three other objects of its picketing—(1) recognition as the sole bargaining representative for the licensed deck officers on the two vessels, (2) a collective-bargaining agreement covering the licensed deck officers on the vessels, and (3) application of wages, terms, and conditions of employment specified in the standard MM&P contract to licensed deck officers on the vessels—he did not consider the extent to which those objects of the picketing were proscribed by the statute.

The Board found that MM&P's picketing violated Section 8(b)(1)(B) and ordered the Union to cease and desist from picketing both vessels and from ''in any other manner, restraining or coercing [the employers] in the selection of their representatives for the purpose of the adjustment of grievances.'' The Union was ordered to cease and desist from picketing for the objects of forcing the employers to recognize MM&P as the collective-bargaining representative of the employers' licensed deck officers, to force the employers to enter into a collective-bargaining agreement, and to impose MM&P's terms and conditions of employment on the licensed deck officers. As a result, the Board reached the issue of the legality under Section 8(b)(1)(B) of MM&P's picketing for the objects found by the administrative law judge other than replacement of the licensed deck officers on the two vessels by MM&P members.

The Fifth Circuit, 539 F.2d 554, enforced the Board's decision in all respects, relying on *Marine & Marketing* for its rejection of the union's argument that the Act was never intended by Congress to reach picketing that promotes or protects only the interests of those MM&P members who are supervisors within the meaning of the Act. It also rejected MM&P's argument that Section 8(b)(1)(B) should have no application to its activities which attempt to protect ''the more traditional labor concerns of wages, terms, and conditions of employment for those supervisory personnel.'' 539 F.2d at 559. Relying on *Marine & Marketing*, the court found that a union, if composed solely of supervisory personnel, is not a ''labor organization'' as defined in the Act and thus is not limited in its activities by Section 8(b). However, MM&P was not a supervisors' union but admitted into membership statutory employees and thus was a labor organization protected by Section 8(a) and restrained by Section 8(b). Thus, although the legislative history of the Act suggested a Congressional desire to leave supervisors to their economic weapons, MM&P lost the unfettered right to take economic action by admitting statutory employees to membership in its organization.

Furthermore, implicit in Section 8(b)(1)(B) is the Congressional judgment that the relations between an employer and its supervisory personnel should be insulated in full measure from coercive efforts by a labor union. An employer may demand with impunity that supervisory personnel neither retain their union membership nor participate in any way in union affairs, and the employer has the prerogative to demand the complete loyalty of its supervisory personnel and designate as its representatives for the adjustment of grievances those persons whom it pleases. The employer's decision may be based on reasons completely divorced from the grievance-adjusting abilities of the different contenders for supervisory positions; rather, the employer is free to designate its supervisors solely on economic grounds, that is, that it could obtain supervisors at less wages and at other economic savings to it.

The court rejected MM&P's argument that the Supreme Court's decision in *Florida Power & Light Co. v. Electrical Workers*, 417 U.S. 790 (1974), impugned either the reasoning of its decision or that of *Marine & Marketing*. In *Florida*

[73] Lowen was asked whether the area standards picketing in this proceeding was protesting the Companies' reduction of manning requirements. Lowen answered that manning was manning and was not a substandard condition—an answer that is very much at odds with the picket signs used in *Westchester Marine*. Of course, Lowen also testified that MM&P had never before picketed to protest area standards—a statement that is factually incorrect, but legally accurate, according to *Westchester Marine*.

Power & Light, the union disciplined supervisory members who crossed a picket line and performed struck work. The Supreme Court refused to find a violation of Section 8(b)(1)(B), which may be found ''only when [the] discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer.'' 416 U.S. at 804–805. In *Florida Power & Light*, the employer contended that the supervisory personnel who were also members of the union were free to decide on an individual basis whether or not they would cross the picket line. Because the Act speaks to coercion of the employer, the court found that it would be difficult to sustain a violation of Section 8(b)(1)(B) in light of the employer's attitude; whereas in *Westchester*, the employers made positive decisions that they desired to have MEBA represent the licensed deck officers. Finally, MM&P's coercion was directed at the employers themselves; the disciplinary procedures in *Florida Power & Light* amounted to ''indirect coercion of the employer at best.'' 539 F.2d at 561. The court found that where MM&P's coercion was applied directly to the employers, the Board was correct in enforcing the statute to its literal limit.

The court then turned to the three other reasons found by the Board, but not by the administrative law judge, to be prohibited objects under Section 8(b)(1)(B). The court agreed with the Board, finding that the three objects—recognition, a collective-bargaining agreement, and adherence to MM&P labor standards—would have necessitated a breach of the then effective collective-bargaining agreement between the employers and MEBA. So, too, would recognition of MM&P by the employers and execution of an appropriate collective-bargaining agreement between those employers and MM&P. A necessary result was that MEBA would have forbidden its members from serving on the vessels and MM&P's objects in picketing thus would have unnecessarily restricted the class of individuals available as licensed deck officers to members of MM&P and no others.

The rivalry between MM&P and MEBA again broke out in 1975 and resulted in *Masters, Mates & Pilots (Cove Tankers)*, 224 NLRB 1626 (1976), enfd. 575 F.2d 896 (D.C. Cir. 1978). There, the vessel *Mount Explorer* had been manned by licensed deck officers from MM&P, was laid up and sold to Cove, and emerged from layup with its vessel manned with licensed deck officers from MEBA. The vessel was met with picket signs proclaiming that MM&P had a collective-bargaining agreement covering the ship. Furthermore, MM&P commenced a libel action on behalf of its licensed deck officers who served under the contract with the former operator of the vessel. Still later, the vessel was picketed with MM&P signs which announced that, although MM&P was not claiming any right to the jobs on the vessels, the new operator violated its common law contractual obligations with MM&P relating to the operation of the vessel and that the vessel was being operated with substandard manning. Among other things, the Board found a violation of Section 8(b)(1)(B), inasmuch as the picketing and the filing of the libel action were directed toward replacement of MEBA officers with MM&P members, recognition of MM&P by Cove, and adoption of the standard MM&P collective-bargaining agreement by Cove.

The District of Columbia Circuit agreed, finding strong evidence supporting the Board's findings of fact in the wording of the first set of picket signs, to wit, ''We have a current collective bargaining agreement covering this ship.'' That constituted a demand that MM&P be recognized as the sole collective-bargaining representative of the licensed deck officers, and it implied that the employer violated the MM&P contract which required that replacements of licensed deck officers be hired through MM&P hiring halls. If MM&P's real object was limited to a claim for wages, as MM&P contended, the limited purpose would have been disclosed plainly by the picket signs and there would have been no broad assertion of the existence of a current collective-bargaining agreement. Other evidence showed that the real purpose was a fight for and a battle over jobs. Thus, the court concluded that the real object of MM&P's picketing was to obtain the removal of the licensed deck officers represented by MEBA and the replacement of them by those represented by MM&P. The court also enforced the Board's broad order prohibiting picketing of any kind by MM&P. It rejected MM&P's argument that the order should be modified ''so as to permit picketing for [MM&P's] non-replacement objectives'' and agreed with *Westchester Marine*, 539 F.2d at 561, that ''the practical effect of seeking these other objects is . . . tantamount to coercion of the employers in the selection of their licensed deck officers.'' 575 F.2d at 907.

The fourth and final dispute between MM&P and MEBA resulted in *Masters, Mates & Pilots (Newport Tankers)*, 233 NLRB 245 (1977), vacated and remanded sub. nom. *Newport Tankers Corp. v. NLRB*, 575 F.2d 477 (4th Cir. 1978), cert. denied 439 U.S. 828 (1978), supp. opinion 240 NLRB 1240 (1979). Again, the vessel's licensed deck officers and engineers were members of MEBA, and MM&P picketed the vessel with signs complaining that the vessel employed a second and third mate not covered by a collective-bargaining agreement and that they were employed under substandard working conditions. MM&P conceded that the first part of its picket sign was incorrect because the deck officers were represented by MEBA. MM&P further conceded that the only ''substandard'' condition to which the signs referred was the condition of having to work without an additional third mate.[74] Its purpose was to force the operator to employ one additional third mate, irrespective of union membership, so as not to undercut the manning standard generally prevailing on vessels manned by MM&P's deck officers.

A divided Board panel found no violation of Section 8(b)(1)(B) and dismissed the complaint. It found insufficient evidence to support a finding that MM&P's true motive was to force the employer into replacing the officers represented by MEBA with officers represented by MM&P. It further found that the object of MM&P's picketing was to persuade the employer to hire an additional third mate but found that this did not violate Section 8(b)(1)(B) because the actual selection of the third mate was left entirely to the employer's discretion. The Board held that: ''Congress enacted Section 8(b)(1)(B) to protect an employer from a union which might seek to impose its will on the employer by dictating *whom* it should or should not select as its collective-bargaining representative or grievance adjuster.'' 233 NLRB at 246; emphasis in original. The Board further wrote:

[74] See fn. 73.

MMP's conduct herein does not diminish in any way the Employer's unfettered right to select the representative of its choice. While concededly the Employer might be forced to hire an additional third mate, the choice as to who that third mate shall be is totally within its discretion and control. There is nothing in the record evidence to indicate that MMP sought to have one of its own members selected as the additional third mate. Indeed, in light of the Employer's current collective-bargaining agreement with MEBA covering all deck officers, we doubt that the Employer could have selected another third mate from among MMP's members or that MMP realistically expected the Employer to do so. [Id.]

The Fourth Circuit disagreed, finding that, although there is a difference of degree in the restraint or coercion, the purpose of the picketing was nonetheless to dilute the authority of the licensed deck officers employed by the employer by requiring that at least some of their duties be performed by others. In any event, the court agreed with the dissenting member of the Board who said that one cannot read *Marine & Marketing*, *Westchester Marine*, and *Cove Tankers* and not recognize the ''fact of life'' that the actual object of MM&P's picketing was the eventual replacement of the ship's deck officers with MM&P members. The court stated at 575 F.2d at 481 fn. 6, in part, as follows:

> It is clear to us, as it obviously was to the Fifth Circuit [in *Westchester Marine*], that MMP's ultimate objective is to supplant MEBA. Whether the immediate picketing objective is wholesale replacement of existing personnel or a more subtle attempt to force the employer into a breach of the existing contract with MEBA, the ultimate effect is equally coercive of [the employer's] right to select its grievance adjusters.

MM&P's ''job action''[75] was clearly coercive and a restraint. By any other words, it was a sit-down strike—and that is what MM&P called it in the sample form of internal union charges, see footnote 54, supra—except for the fact that MM&P permitted the officers to sail to a safe anchorage and to ensure the safety of the vessel.[76] Otherwise, the licensed deck officers who complied with the directive did nothing on the job and, like many sit-in strikers, refused to leave the vessels except under legal constraint. The purpose of MM&P's job action was no less than the purpose of a strike, to stop the Companies' vessels from operating and to cause the Companies as much misery as possible in the event that they attempted to maintain their operations. A union strike, or even threat to strike, in order to compel an employer to choose or replace 8(b)(1)(B) representative operates as a restraint within the meaning of that Section. *Sheet Metal Workers Local 17 (George Koch Sons)*, 199 NLRB 166 (1972), enfd. 502 F.2d 1159 (1st Cir. 1973), cert. denied 416 U.S. 904 (1974).

I adopt the compelling logic and rationale of the decisions in MM&P's prior Board proceedings. Just as in *Marine & Marketing*, *Westchester Marine*, and *Cove Tankers*, where the Board found that MM&P's object was to require the employer to replace MEBA licensed deck officers with those belonging to MM&P, I find a like object of MM&P's job action—to replace those who were willing to work for the Companies with those who MM&P agreed could work for the Companies, under general conditions acceptable to MM&P. In particular, that group includes those officers who had worked for MTL prior to 15 June and who after 15 June decided not to work for MTL. Once officers complied with Lowen's 3 October directive, MM&P's objective to replace the replacements applied to Keystone, MOC, and Mormac as well.

Just as in *Westchester Marine*, MM&P's job action was intended to obtain recognition for the licensed deck officers on all the Companies' vessels and a collective-bargaining agreement covering those officers. If MM&P's object was not to obtain an agreement precisely the same as the dry cargo contract it then had in effect, clearly MM&P was looking for better wages and benefits, as well as resumed participation in MM&P's pension and health plans. In other words, MM&P's job action restrained the Companies from hiring those who were willing to work for wages and benefits less than what MM&P wanted to attain and who were willing to forgo participation in MM&P's health and welfare and pension plans.[77] Finally, although in *Cove Tankers*, MM&P picketed with picket signs stating that MM&P had a collective-bargaining agreement covering the vessel, here MM&P commenced legal actions against MTL and MOC on the basis that they had agreements. That was accompanied by MM&P's job action, and the net effect was hardly different from that declared illegal in *Cove Tankers*.

[75] Lowen's nomenclature is understandable. Infuriated by *Marine & Marketing* and its progeny, which he termed ''horrendous'' and ''bizarre,'' he was under the mistaken impression that if he changed names for what MM&P did (from ''strike'' to ''job action''), he might be able to foreclose judgment that MM&P violated the Act. And so, to him, the word ''strike'' was to be avoided at all costs. (He slipped from time to time, calling the ''communications room,'' the ''strike communications room'' and more than once in his correspondence referring to the ''strike'' or ''strike committee.'') Even at the time when the dry cargo negotiations had not been consummated in June, although for years and years strike committees (which are specifically named in MM&P's constitution) had been formed to supervise MM&P's port activities, Lowen testified that he instructed the formation of job action committees, which Martin testified (in contradiction of Lowen) were called ''strike committees'' for want of a better name. In fact, strike committees were created pursuant to a telex issued on 11 June in Lowen's name and reactivated by another telex in his name on 3 October. That ''better name'' of strike committee was used by each committee in MM&P's ports, with the exception of New York, which called itself an ''action'' committee. Telexes were sent under the name of strike committees and paid for by MM&P, and no one from international headquarters complained that their titles were wrong. Lowen's instructions were not in writing, and Lowen relied solely on oral instructions. The documentary evidence does not support his testimony that the ports simply disregarded his instructions.

[76] Lowen denied knowing what was or ever hearing the expression ''sit-down strike.'' I find that incredible.

[77] MM&P relies on *Hanna Mining Co. v. District 2 MEBA*, 382 U.S. 181 (1965), to show that recognitional economic action which does not displace the employer's designated grievance adjusters is not prohibited by the Act. In *Hanna Mining*, the Supreme Court held that the union's picketing to obtain recognition was not an arguable violation of Sec. 8(b)(7)(C), because picketing which violates that section concerns recognition of a union as the representative of employees, not the supervisors for which MEBA sought to be the representative. There was no discussion of the picketing under Sec. 8(b)(1)(B), nor mention of that subsection, about which the law began to develop only some 8 years later in *Marine & Marketing* and its progeny. In the latter decision, 486 F.2d at 1275 fn. 3, the court noted that, while *Hanna Mining* ''may constitute an implicit holding that the picketing there did not violate Section 8(b)(1)(B),'' the picketing there was not directed at having certain supervisors fired and replaced, as was the case in *Marine & Marketing*, and as I have found above.

Contrary to the position of some of the parties, it appears that in *Hanna Mining* the Court and the Board treated MEBA as a labor organization. See *MEBA v. Interlake Steamship Co.*, 370 U.S. 173, 182–183 (1962).

NLRB v. Electrical Workers IBEW Local 73, 714 F.2d 870 (9th Cir. 1980), cited by MM&P to demonstrate that Section 8(b)(1)(B) does not apply to situations where a union does not seek to represent the employer's statutory employees, does not represent Board law, by which I am bound. In none of the prior MM&P proceedings was it found that MM&P represented or claimed to represent statutory employees of the employers. Furthermore, the Eleventh Circuit expressly rejected the analysis of the Ninth Circuit in *NLRB v. Electrical Workers IBEW Local 323*, 703 F.2d 501, 505–507 (1983). In any event, the Ninth Circuit found that it might arrive at a different conclusion ''if there is evidence that the union's actual purpose in enforcing its bylaw [prohibiting union members from working for nonunion employer] was to interfere with the employer's selection'' of its grievance adjuster. 714 F.2d at 872. I have found such a purpose. I conclude that the objectives of the job action were illegal and that the job action violated Section 8(b)(1)(B) of the Act.

H. *The Legality of the Area Standards Picketing*

When the time came in and about mid-October when, Lowen testified, the job action'' was converted to substandard picketing, there was hardly any change of MM&P's tactics from one day to another. There was more picketing by MM&P, by its licensed deck officers, officials, and even pensioners; and MM&P hired picket boats which, on occasion, harassed the vessels and their crews as they attempted to dock, undock, and sail. Admittedly, there were new area standard signs carried by the pickets, but those new signs were not carried universally. In addition, they were carried at some curious places, such as where one of MTL's MSC vessels docked, despite the fact there had been no change in the vacation benefit on that vessel and MTL had, at best, reduced its vacation package to the same number contracted on its MSC vessels, with MM&P's blessing. Yet it too was picketed with the substandard sign decrying the less than standard vacations paid by MTL.

The lack of candor of the substandard sign is just one bit of support that the signs were merely a ruse for the continuation of MM&P's illegal motives, which was evidenced by the continuing district court litigation [78] and the use of many other signs, none of which were directed to the substandard wages and other benefits which were being paid on the vessels or by the Companies.[79] rather, MM&P made a variety of other claims, such as raids by other unions, unfair labor practices, the potential loss of pension benefits and injury to pensioners, the loss of jobs, the right to return to jobs, lockouts, replacements, the hiring of ''scabs,'' and employment of ''nonunion'' personnel and ''finks''—all the indicia of a typical strike where the strikers have been replaced, except that the law does not permit a labor organization to complain that 8(b)(1)(B) supervisors have been replaced, with an aim to replacing them. Clearly, those signs were completely inconsistent with MM&P's claim that its picketing was directed solely to the Companies' substandard wages, vacations, and other working conditions. So was MM&P's use of picket boats, which, instead of making an appeal to the public and the Companies' customers, harassed and interfered with the operation of Keystone's and MOC's vessels.

Lest there be some sympathy with MM&P's plight, based on the argument that Congress permitted supervisors to do as they wished, outside the protection and restrictions of the Act, MM&P was warned as early as in *Marine & Marketing* and through the three other lengthy legal proceedings that if it desired to organize and admit statutory employees, then it became a labor organization and was subject to the Act. In other words, it had a choice; and it has exercised its option by recently entering into an agreement with one maritime employer whereby MM&P represents both unlicensed crewmembers and licensed deck officers on oceangoing vessels. I assume that MM&P knew what it was losing and gaining by remaining a statutory labor organization.

Admittedly, in at least three of those legal proceedings, MM&P was protesting MEBA's raid of its jurisdiction, but clearly MM&P was also protesting the undermining of certain working conditions which it had attained over the years. That is present here, as is an underlying dispute between MM&P and the other maritime unions, who MM&P complained were not honoring MM&P's picket lines against the Companies. The dispute was of such moment that MM&P accused MEBA of having urged and assisted MTL in withdrawing from negotiations with MM&P,[80] and MM&P members picketed the office of MEBA on one occasion.

I find that MM&P was desperately seeking the support of the other maritime unions and reject Lowen's denial that MM&P was not responsible for the mass of letters sent to AFL–CIO President Lane Kirkland in mid-October by strike committee members and port representatives and officials of MM&P. By that time MM&P had been unsuccessful in halting the Companies' operations. Many of its members stayed aboard the Companies' vessels and refused to comply with Lowen's 3 October directive; other members, and nonmembers, too, were enlisted to work for the Companies. Pilots were servicing the vessels and other unions refused to honor MM&P's picket lines and pleas for help. The same kind of internecine strife which the foregoing decisions dealt with started to erupt; and the AFL-CIO and its ad hoc maritime committee appeared to be an obvious place where MM&P might get relief and, particularly, cooperation.

The record shows not only Lowen's appeal for cooperation from the other maritime unions and for a meeting of the ad hoc committee to prevent ''stripping licensed deck officers

[78] MM&P contends that it ''may legitimately engage in area standards picketing for a non-recognitional objective, while at the same time it attempts to achieve a recognitional objective through other means altogether.'' This proposition, unsupported by any citation, is almost self-contradictory because MM&P's legal actions make clear that it was not exclusively seeing to call to the public's attention the fact that the Companies were eliminated. *International Hod Carriers Local 41 (Calument Contractors)*, 133 NLRB 512 (1961). The Board has always carefully scrutinized all of the facts to determine whether a union's efforts were limitd solely to securing compliance with area standards. *Retail Clerks (State-Mart, Inc.)*, 166 NLRB 818, 823 (1967), enfd. 404 F.2d 855 (9th Cir. 1968); *NLRB v. Electrical Workers IBEW Local 265*, 604 F.2d 1091, 1097 (8th Cir. 1979). In both *Westchester Marine*, 539 F.2d at 561, and *Cove Tankers*, 575 F.2d at 902–904, once the court determined that MM&P had a recognitional objective, it found that there could not be area standards picketing. See also *Carpenters (Shepard Marine)*, 195 NLRB 530, 531 (1972); *Amalgamated Meat Cutters Local 340 (PFA-Farmers)*, 232 NLRB 111, 116–117 (1977); *National Maritime Union (Overseas Carriers)*, 174 NLRB 216, 221 (1969).

[79] The Board is not bound by MM&P's self-serving declaration of a lawful object of its picketing. *NLRB v. Teamsters Local 182*, 314 F.2d 53, 58–59 (2d Cir. 1963). In both *Westchester Marine*, 219 NLRB at 26 fn. 1 and 39 fn. 26, and *Cove Tankers*, 224 NLRB at 1634, the Board discredited MM&P's claims that it was picketing to protect its area standards.

[80] MOC Exh. 21, p. 2.

of union representation,'' but also Lowen's requests of the various ports and members to write to Rirkland urging that the other maritime unions support MM&P; and that is what happened, an outpouring of letters, many signed by strike committee chairmen and MM&P port representatives. If these representatives did not know of MM&P's objects andintent, it is questionable that anyone did.[81] Their complaints were the complaints of MM&P; their expressed goals were the goals of MM&P. I will hold MM&P responsible for them,[82] some of which complained of the Companies' refusal to bargain with MM&P and of union-busting (thus meaning that MM&P wanted to return to a representative position, i.e., sought recognition); some of which complained of union-raiding, that MM&P was being replaced by ''finks'' and ''scabs,'' that ''members of the AFL–CIO [were] taking our jobs'' (meaning that MM&P wanted to get its jobs back),[83] and that MEBA was undermining MM&P's negotiating position by offering lower wages, manning scales, vacations, and other benefits (shades of the past litigationl); and others of which complained of a lockout, the loss of 78 vessels, and loss of ''union jobs'' and jobs that had been historically contracted to MM&P, and loss of ''security.''

Thus, there were the same indicia of illegal objectives during the period of the picketing as there were when MM&P was conducting its job action. Although I have taken Lowen's date of the changeover to picketing from job action as mid-October, his testimony was contradicted by others. MM&P Representative Haa testified that the job action did not end until the district court's injunction issued. Martin said the same, too, but at other points of his testimony said that (1) the job action ended when the officers of the last vessel to complete a voyage after 3 October terminated articles in early November; and (2) that picketing sites authorized by MM&P were wherever the job action was taking place, thus indicating the inseparability of the two. Communications from MM&P were issued on 30 October entitled ''job action update,'' throughout November referring to the ''job action,'' and on 2 January 1985 complaining of a ''total lack of support for our job action.'' Perhaps of greatest interest is Lowen's telex of 14 November, which he called an update on the tanker *job action*. In it, he wrote about the picketing which was continuing on all runaway tankers, pilot support and observance of the picket lines, and continuing efforts by MM&P's counsel to enforce MM&P's claims against MTL and MOC that MM&P continues to have collective-bargaining agreements.

Port job action expenses incurred throughout November were reimbursed by international headquarters. Fines were issued against licensed deck officers in December for continuing violations of Lowen's 3 October job action directive; and a number of fines were levied for conduct commencing on 18 October, a date when the job action had allegedly ended and the area standards picketing had allegedly commenced. Neal R. Wood, a Keystone chief mate, was fined over $30,000 for conduct occurring on 18 October; Julius L. Perkins, an MTL master, $500, plus twice his daily wages per day for his ''failure to support and comply with an officially ordered job action sit down strike'' by failing to stop work on 19 October; Constantinos Vafiades, a Keystone second mate, over $22,000 plus daily fines for his conduct on 1 November; Edward Welch, an MOC chief mate, $5000 per month ''beginning October 25th, 1984; the fine to continue as long as Edward Welch continues to work on non-MM&P contract vessels;'' and Loyd H. Newton, an MM&P pilot, $10,000 for his working ''on 27 November 1984, when the Energy Independence was coming in the Harbor of Norfolk'' and $3000 for each additional voyage.

No object of MM&P's job action appears to have changed between early October and late October; and I find the area standards picketing merely a facade for MM&P's real objects. *Service Employees Local 9 (United Artists)*, 272 NLRB 685 (1984); *Millmen-Cabinet Makers Union Local 550 (Diamond Industries)*, 227 NLRB 196 (1976). As expressed by MM&P Assistant Port Agent Harry in trying to convince MEBA to honor MM&P's picket line: ''It is a strike. It's a picket line. . . . you saw the [Kirkland] telex and you know that this is a picket line. . . . And we want all the support we can get from anyone who'll give it. Our people aren't working, not MM&P people. We are on strike, but we can't use that word on the signs because we're classed as supervisors and the companies can get injunctions and take down the lines if we put the wrong things on the signs.''[84]

By Lowen's admission, the area standards picketing commenced as a ''second phase'' because the first phase, the job action, had failed. The picketing did not commence because the job action had attained its recognitional and replacement objectives. The 3 October job action directive stayed in effect and was never rescinded, repudiated, or abandoned. MM&P started the picketing only because at least part of the job action had lost its significance. That part was really irrelevant, because there was no one to conduct a sitdown strike. What remained is that loyal MM&P members were not to work for the Companies, and the picketing was intended further, in Lowen's words, to hurt the Companies.

Thus, contrary to Lowen, the job action and the picketing did not parallel each other with different purposes; but they both remained in effect. Other than the use of the substandard sign, there is nothing to indicate that MM&P changed its objectives. There was no hiatus between the illegal job action and the allegedly legal area standards picketing; it is impossible to pinpoint that moment of time when

[81] See the following: Bara, ''striking deck officers [and] strike demonstrations''; Swanson, Gras, and Nereaux, ''tanker companies . . . refuse to bargain with us . . . union busting and raiding''; Bara, ''five tanker companies . . . have kicked our union people off the ships . . . union busting''; Wilson, ''loss of 78 vessels''; and Groh, ''protecting our jobs, wages and benefits.''

[82] Two telexes sent by different ports are the same. G.C. Exhs. 119 and 121. Copies of most correspondence were sent to international headquarters, which did not disavow them in writing. Lowen claimed that he told the AFL–CIO's secretary-treasurer in a telephone conversation to disregard their contents as unauthorized, but I do not credit his testimony. I find it most suspicious that on several occasions when Lowen and Martin stated that some critical event happened, contradicting a written document, the testimony was of some one-on-one conversation which could hardly be rebutted. The documentary evidence here is too overwhelming.

[83] Martin admitted that one of the purposes of the picketing was to force the Companies to agree to a union-security clause to protect MM&P jobs. MM&P's initiation fee is $3000, which may well deter a licensed deck officer from accepting employment with an employer which requires him to join MM&P.

[84] On 4 December, Don Fuller Sr. advised his membership in a special report that MM&P was ''on strike'' against MTL, Keystone, and MOC, who had ''all abandoned their contracts with'' MM&P. At an MM&P meeting in New Orleans on 14 November, chaired by Kyser, one of MM&P's principal officers, the area standards picketing phase of MM&P's action was referred to frequently as a ''strike.'' Kyser never corrected that terminology to advise the members that they were engaged solely in area standards picketing.

MM&P's illegal objects changed; and there is nothing to indicate that MM&P disclaimed the recognitional and replacement objects of its job action. I refuse to believe that anything changed. *McClintock Market*, 244 NLRB 555, 556 (1979); *Electrical Workers IBEW Local 3 (Hunts Point Electrical)*, 271 NLRB 1580 (1984). I find merely different means to the same ends, *Laborers Local 275 (S. B. Apartments)*, 209 NLRB 279, 284 (1974); and the timing of the commencement of the area standards picketing, so soon after the first unfair labor practice charge was filed in this proceeding, leads me to believe that the picketing was merely a reaction to the charge, and nothing more. I thus find that the picketing, with its illegal objects, violated Section 8(b)(1)(B) of the Act.

The General Counsel, MTL, Keystone, and MOC contend that, assuming arguendo that MM&P's picketing was to protest the Companies' substandard wages, vacations, and other benefits, the picketing nonetheless violated Section 8(b)(1)(B), citing *Sheet Metal Workers Local 17 (George Roch Sons)*, 199 NLRB 166 (1972). There, the union charged and fined a union member-company supervisor who adjusted grievances for working for less than the area wage, being paid for 40 hours while working more hours, having no health and welfare and pension contributions paid on hours worked, and contracting to do business on a basis other than that provided in the area contract. The union also struck the employer twice to compel it to pay to the supervisor back wages and overtime and to make payments to the union's health and welfare and pension plans. The Board found that both the fine and the work stoppage violated the Act. It wrote, 199 NLRB at 167–168:

> [The fine] related directly . . . to the very process of supervisory selection by Respondent. If an employer is to be free from union coercion in the selection of persons who are to serve the employer as its representatives, then surely the employer must be free from union coercion in the matter of setting the terms of such representatives' employment. Thus to fine one who agrees to serve as an employer's representative solely because he and the employer agreed on terms and conditions of employment which the union may find objectionable must necessarily have an inhibiting effect—and indeed a coercive effect–on the employer in his future selection of representatives. And this is true no matter at what point in time the fine itself may have been imposed. The message to the employer will be clear for the future—don't select a supervisor unless the union approves of the terms and conditions of his employment.
>
> As the above comments suggest, we are also unwilling to accept the Trial Examiner's conclusion that Ziltener was not charged with any violation relating to his supervisory status but was fined solely for violation of Local 17 rules. Those rules, as applied by the Union here, would permit the union to dictate the terms and conditions under which an employer could select and engage its management representatives. That seems to us such a clear interference with the freedom of the employer to select his representatives as to constitute an open and obvious violation of Section 8(b)(1)(B). We think it equally clear that the work stoppages which were initiated by Respondent were for the purpose of requiring Roch to accede to the union-dictated terms and conditions of Ziltener's employment and thus coerced the Employer in the same manner as the fines levied on Ziltener himself, and we find such conduct on the part of the Union also to be violative of Section 8(b)(1)(B).

In *Westchester Marine*, the Board rejected MM&P's argument that Section 8(b)(1)(B) was not intended to prohibit it from picketing in order to prevent the erosion of labor standards which MM&P established over years of collective bargaining. Although that statement was made in the context of a finding that MM&P was picketing to rid MEBA from the vessels and to obtain recognition and/or a collective-bargaining agreement, it is difficult to reconcile the concepts that, if MM&P may not picket to prevent the erosion of labor standards it established, it may picket for the same ''area standards'' which it established. The Board found that MM&P's entire course of conduct was to coerce the employers to cancel their contracts with MEBA and to fire the MEBA masters and mates and hire MM&P masters and mates, that is, to secure recognition and impose MM&P's contract. That conduct, which interfered with the employers' freedom to set the terms and conditions of Section 8(b)(1)(B) representatives, necessarily interfered with the employers' selection of persons to act as their representatives ''in the context of this case,'' citing *George Roch*, 219 NLRB at 27.[85]

The Board did not spell out what the special context was, but the Fifth Circuit relied on facts which are different from the instant case: that because MEBA had a contract, MM&P's attainment of its higher standards would have compelled MEBA to forbid its members from serving on the vessels because its contracts would have been breached. There was a threat to MEBA's competitive advantage in representing licensed deck officers, an advantage which would be erased if MM&P's picketing were successful.[86] But *George Koch* is not based on any such rationale. The employer there hired a supervisor for certain wages and other conditions of employment, including contributions to his home local union's welfare and pension plans. The union respondent

[85] *George Roch* was not overruled by *Florida Power & Light*, as MM&P argues; and, by citing *George Roch* in *Westchester Marine*, the Board has considered the *George Roch* rationale still viable. *Florida Power & Light* is thus not limited to restraint and coercion solely with respect to the selection of 8(b)(1)(B) representatives but refers to the establishment of those representatives' wages and conditions of employment. To the contrary, MM&P in *Newport Tankers* left up to the employer's discretion the terms and conditions of the representative's employment. Furthermore, unlike *Florida Power & Light*, a union discipline case, here MM&P's job action and picketing directly coerced the Companies in their selection of their representatives. See *Westchester Marine*, 539 F.2d at 560–561.

[86] Some of the Companies also rely on *Newport Tankers* to the extent that, if they had to increase their wages and benefits to the level insisted on by MM&P, they might be financially unable to afford as many licensed deck officers, thus reducing the number of their 8(b)(1)(B) representatives. Of course, present Board law is that it is not an unfair labor practice to picket to add an officer, although the Board's dismissal of the complaint was not enforced by the Fourth Circuit. But it appears a different case when costs have to be raised to such an extent that there is clearly the threat that the Companies, which wanted to designate three 8(b)(1)(B) representatives, could only designate two. However, there is no reasonable expectation that the Companies would do so because, except as indicated above, they did not do so when they repudiated their relationship with MM&P. Furthermore, they could be prohibited from reducing their complement of officers below three, except in certain circumstances, by the Federal Shipping Act. 46 U.S.C. §§ 8104(d) and 8301.

struck to ensure that the supervisor was paid an amount consistent with that union's contract, including payment to that union's health and welfare and pension plans. The Board held that that was an attempt to dictate to the employer the terms of the supervisor's employment.

Although ''area standards'' seeks only that the employer pay an amount equivalent to the costs paid by employers who constitute the standard in that area, *Retail Clerks Local 1557 (Giant Food)*, 241 NLRB 727, 728 (1979),[87] it is for the employer to determine how its total costs for its supervisors should be divided. Here, of course, MM&P went beyond pure ''area standards'' by complaining in its signs about substandard vacations, a patently clear intrusion upon the Companies' right to set their own terms and conditions of employment. And, really, the aim of this picketing, when considered together with the fines of the MM&P members who allegedly failed to comply with the 3 October directive, was, if not to have MM&P members quit their jobs, to force the Companies to increase their total costs for their supervisors to a certain amount. Even though that (other than vacations) did not dictate specific terms of employment, it was enough to restrain the Companies. Just as the supervisor in *George Koch* was willing to work for a specific amount, the masters and mates who agreed to work on the Companies' vessels were, too; and under that authority, MM&P was not privileged to picket to restrain the Companies from selecting 8(b)(1)(B) supervisors in the manner which the Companies desired.

What MM&P has done is to tell its members that they may not work under the terms of the wage and benefit packages which the Companies have offered. They may work for the Companies only when their wage and benefit packages reach a level equal to those of MM&P's tanker or dry cargo agreement. In its essence, MM&P has attempted to limit the Companies from freely choosing its 8(b)(1)(B) representatives to only that population which wishes to ensure that the Companies' labor costs (not benefits to the supervisor) are equal to that which MM&P claims is the standard cost.

George Koch prevents that, and I conclude that even true area standards picketing by MM&P would coerce employers to raise their wage and benefit package for their 8(b)(1)(B) representatives and would thus inhibit their selection of such representatives, in violation of Section 8(b)(1)(B) of the Act.[88]

Finally, in addition to the job action and substandard picketing, there was evidence of various threats of violence in mid- to late October directed against Keystone and MOC supervisors and a Keystone attorney, all committed in the presence of statutory employees or, at least, where statutory employees were in the vicinity of the conduct, and one series of threats directed at a Keystone employee. All violate Section 8(b)(1)(A) of the Act. The threats to the employee require no explanation. With respect to the others, the theory is that a threat of violence nis calculated to serve as a warning to nonstriking employees who hear it or may reasonably be expected to learn of it, that like violence may be inflicted upon them if they do not support the labor organization in the activity in which it is engaged.'' *Retail Wholesale Union (I. Posner, Inc.)*, 133 NLRB 1555, 1566 (1961); *Furniture Workers (Brooklyn Spring)*, 113 NLRB 815, 822 (1955), enfd. 233 F.2d 539 (2d Cir. 1956); *Bartenders Local 2 (Zim's Restaurants)*, 240 NLRB 757 (1979). In addition, the threats of violence directed at the supervisors personally violated Section 8(b)(1)(B), because they necessarily tended to restrain and coerce the second mate of the *Puerto Rican* and the master of the *Juneau*, to wit, they had a reasonable tendency to force them to leave their jobs. *Broadway Hospital*, 244 NLRB 341, 345–346 (1979).

I. *The Legality of MM&P's Fines and Threats to Fine*

Prior to 1968, the Board interpreted Section 8(b)(1)(B) to prohibit coercion or restraint by a union upon an employer to force him into a multiemployer unit or to dictate or control the employer's choice of the person to do its collective bargaining and grievance adjustment.[89] In 1968, the Board held in *San Francisco-Oakland Mailers' Union 18 (Northwest Publications)*, 172 NLRB 2173, that a union may not fine a supervisor-member because, in carrying out his supervisory duties, he construed a contractual provision adversely to the union. Thus, the Board for the first time applied Section 8(b)(1)(B) to pressure directly on the supervisor which only indirectly coerced the employer. The Board held at 2173:

> That Respondent may have sought the substitution of attitudes rather than persons, and may have exerted its pressures upon the Charging Party by indirect rather than direct means, cannot alter the ultimate fact that pressure was exerted here for the purpose of interfering with the Charging Party's control over its representatives. Realistically, the employer would have to replace its foremen or face *de facto* nonrepresentation by them.

The Board expanded on *Oakland Mailers* within the next few years to encompass within the bounds of Section 8(b)(1)(B) any discipline of a supervisor when he was engaged in management or supervisory activities and the discipline interfered with the supervisor-member's representation of his employer's interest, even though his collective-bargaining or grievance adjustment duties were not involved.

[87] Under the prevailing analysis, it makes no difference that the employees may be paid more but at less expense to the employers, a rather curious result. Thus, even assuming that the Companies offered their supervisors a pension plan which guaranteed more benefits when the supervisor retired than that granted by MM&P's pension plan, which costs more, MM&P seeks to dictate to the Companies even greater benefits to their supervisors than would be obtained under the MM&P contract.

[88] In light of my conclusions, it is unnecessary to consider the myriad of other issues briefed by the parties, including whether MM&P's claim that the Companies' wages, vacation, and other ''paid'' working conditions were substandard to MM&P's area standards. Because MM&P has been willing to make special contracts with certain employers, with each contract being different, some containing lower wages and vacations as low or lower than that afforded by some of the Companies, the Companies have presented compelling arguments that MM&P has no standard to protect and, thus, the area standards picketing is fatally defective. MM&P has a most difficult task to argue cogently that the Companies may legitimately be picketed for violating a standard which MM&P has violated in numerous contracts. Indeed, Lowen's defense, in part, relies on his professed recognition that the fragmentation of the tanker industry effectively blocked negotiations of a standard tanker agreement, which implies that there can be no standards for which MM&P could picket.

[89] The Supreme Court comprehensively reviewed the history of Sec. 8(b)(1)(B) in *Florida Power & Light v. Electrical Workers*, 417 U.S. 790 (1974).

See, for example, *Toledo Lithographers (Toledo Blade)*, 175 NLRB 1072 (1969), enfd. 437 F.2d 55 (6th Cir. 1971).

That expansion was halted by *Florida Power & Light*, which involved union fines of supervisor-members for crossing picket lines and performing rank-and-file struck work during lawful economic strikes against their employers. Some of the supervisors were members of the bargaining units and some were not, and ''rank-and-file struck work'' was defined as ''work normally performed by the nonsupervisory employees then on strike.'' Id. at 792. The Supreme Court found no violation, stating:

> The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of Section 8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer. [Id. at 804–805.]

The Court noted that, if there were a question of the ''conflict of loyalties'' of supervisors, Congress had addressed that through provisions which excluded supervisors from the protection of the Act, thus permitting an employer to refuse to hire union members as supervisors, to discharge supervisors because of their union activities, and to refuse to engage in collective bargaining with them. Otherwise, in Section 8(b)(1)(B) Congress was exclusively concerned with union attempts to dictate to employers who would represent them in collective bargaining and grievance adjustment. Id. at 803.

The Court assumed, without deciding, that *Oakland Mailers* fell within the outer limits of its *Florida Power & Light* holding, 417 U.S. at 805, as it did when faced with its next union fine case, *American Broadcasting Co. v. Writers Guild*, 437 U.S. 411, 436 (1978). There, the union fined members who had crossed a picket line during a strike and had performed only their regular supervisory duties, including the adjustment of grievances. The Board found a violation. The Court held that the Board properly limited its inquiry to whether the fines adversely affected the supervisors' performance of their collective-bargaining and grievance adjustment duties, id. at 430, and approved the Board's inference that union discipline could adversely affect the performance of the supervisor's grievance and adjustment duties either during or after the strike. Id. at 432. When an 8(b)(1)(B) representative has been disciplined for performing only regular supervisory functions, the Board has consistently found a violation. See, for example, *Machinists Local 297 (Globe Machine)*, 272 NLRB No. 50 (Sept. 25,1984) (not reported in Board volumes).

In *Columbia Typographical Union No. 101 (Washington Post)*, 242 NLRB 1079 (1979), the Board was presented with what it termed a ''factual situation which falls between . . . *Florida Power* and *ABC*''—union fines against supervisor-members ''who crossed a picket line to work during a lawful strike and to perform regular supervisory duties as well as a more than minimal amount of rank-and-file work.'' Id. at 1080. The Board held that a fine against a supervisor who performs more than a minimal amount of rank-and-file work cannot give rise to a violation of Section 8(b)(1)(B) because ''it does not follow that the reasonably foreseeable effect of the union's discipline of the supervisor-member is to diminish his ability to perform his 8(b)(1)(B) duties. Rather, it must be inferred, and the probabilities indicate, that the union discipline will serve to affect adversely and to deter the supervisor-member's willingness to perform rank-and-file struck work during an employer-union dispute.'' Id. at 1081.

This proceeding obviously involves another in-between situation which may not occur with the frequency of other union fine cases, for here, MM&P's members are all supervisors of the Companies. In *ABC*, supervisors could be fined for performing the struck work which was not the work they ordinarily performed. Here, to the contrary, the struck work is the supervisors' work; and many of the supervisors merely performed on and after 3 October precisely the same kind of work that they had performed on 2 October. One other difference between the MM&P strike and the strikes involved in the cited decisions is that I have concluded that the MM&P strike is unlawful, whereas the Court and the Board specifically referred to the strikes in the cited decisions as ''lawful.''

It is true that *Florida Power & Light* makes clear that the Companies could have insisted that their supervisors not be members of any union, including MM&P; and the various supervisors, I infer, held on to their membership in MM&P because it was beneficial to them (death benefit, welfare plan, and the like). Furthermore, the MM&P members were not ordered to continue work by the Companies. They were given the option of remaining on board or leaving the vessels. Those who chose to remain on board knew well that they were not complying with Lowen's directive and they took the risk that, if the directive were lawful, they might be found in violation of MM&P's lawful orders.

However, *ABC* found that Congress specifically protected the rights of employers to designate collective bargainers and grievance adjusters of their own choice and that is paramount to the right of a union to punish its own members. The Court wrote, 437 U.S. at 430–431:

> [A]n employer also has economic rights during a strike, and the statute declares that in the unrestrained freedom to select a grievance-adjustment and collective-bargaining representative, the employer's rights dominate. Ample leeway is already accorded to a union in permitting it to discipline any member, even a supervisor, for performing struck work—to carry that power over to the case of purely supervisory work is an inappropriate extension and interference with the employer's prerogative.

The Supreme Court has instructed in *ABC* that: ''The inquiry whether union conduct would or might adversely affect the performance of the [licensed deck officers'] Grievance-adjustment duties is . . . necessarily a matter of probabilities, and its resolution depends much on what experience would suggest are the justifiable inferences from the known facts.'' Id. at 432.

I find that the 3 October directive was effective in its purpose of warning officers that, if they refused to comply, their names would be turned in to MM&P. Officers who had indicated their intention to remain in the Companies' employ under their new terms and conditions of employment changed their mind and complied with the directive. The im-

plicit threat of discipline contained in it could have been avoided only by the officers' refusal to perform their duties (including grievance adjusting) and participating in the job action. *Carpenters (A. S. Horner)*, 177 NLRB 500 (1969), enfd. 454 F.2d 1116 (10th Cir. 1972), cited with approval in *Carpenters (Skippy Enterprises)*, 211 NLRB 222 (1974), enfd. 532 F.2d 47 (7th Cir. 1976). A number of officers insisted on being removed from their vessels by arrest or legal instrument in order to ensure that they were complying with all phases of the directive and would not have charges brought against them. As to those who remained in employment, the pressure of the fines levied on them both before and after hearing would make it probable that many officers would quit their jobs, rather than remain and lose their pay, or even twice their pay, for the privilege of working.[90] In both instances, the Companies either were deprived or would be deprived of their 8(b)(1)(B) representatives.

As noted above, various of the strike (trial) committee fined MM&P members $500, and double their salaries thereafter, without notice or hearing. MM&P's counsel in their memorandum of law concede that these fines were illegal (the constitutional provision being a ''pre-LMRDA anachronism''), but that does not allay the fears of the vessels' officers, who had ample cause to believe that they were losing rather than making 1 day's wages each day that they sailed. Martin may cavalierly disregard the attempts of members to resign from membership, without constitutional authority;[91] but supervisors were fined hundreds of dollars for each day that they continued not to comply with Lowen's directive. MM&P's counsel in their memorandum of law assures the Board and the licensed deck officers that the fines will not be levied past the date of the attempted resignations, despite the fact that the attempts were rejected, but counsel's present contention gave little assurance to those on board the Companies' vessels in October, November, and December that they were not deeply in debt.

As the Supreme Court stated, supervisors ''were thus faced not only with threats but also with the *actuality* of charges, trial, and severe discipline simply because they were working at their normal jobs. . . . How long such [supervisors] would remain on the job under such pressure was a matter no one, particularly the employer, could predict.'' *ABC*, 437 U.S. at 434. I do not believe it untenable that the affected Companies might be deprived of 8(b)(1)(B) representatives of their own choosing, simply because they were driven away. And, should the pressure be relieved, and there be another strike, and more directives and fines forthcoming from MM&P, would it not be reasonable for the Companies to feel uncertain whether their supervisors would answer their call to duty? Id. at 435.[92]

Such a likely impact on the Companies ''constitutes sufficient restraint and coercion in connection with the selection of collective-bargaining and grievance-adjustment representatives'' to violate Section 8(b)(1)(B). Id. at 435–436. In addition, I have found that MM&P's job action violated Section 8(b)(1)(B) and therefore the strike was not ''lawful.'' The Board has held that, in such circumstances, fining a supervisor-member for refusing to honor a directive not to strike is a separate and independent unfair labor practice because it has the necessary and foreseeable tendency to coerce the Companies into acquiescing in MM&P's unlawful objectives. *Columbia Typographical Union No. 101 (Byron S. Adams)*, 219 NLRB 88, 90 fn. 3 (1975); *Mississippi Gulf Coast Building (Roy C. Anderson Jr., Inc.)*, 222 NLRB 649, 650 (1976), enfd. 542 F.2d 573 (5th Cir. 1976); *Carpenters (Pace Construction)*, 222 NLRB 613, 618 (1976), enfd. 560 F.2d 1015 (10th Cir. 1977). The numerous threats of discipline if the officers failed to comply with the 3 October directive and the commencement of internal union proceedings, issuance of fines, conduct of trials, and issuance of decisions—all constitute independent violations of Section 8(b)(1)(B) of the Act.

Finally, there is sufficient evidence in this record showing that MM&P also brought charges against and fined its pilot-members for not withholding their services from the Companies. For the same reason as above, MM&P violated Section 8(b)(1)(B) because the fines have the necessary and foreseeable tendency to coerce the Companies into acquiescing in MM&P's unlawful objectives.

Accordingly, I conclude that MM&P's charges, fines, and threats to fine are all violations of Section 8(b)(1)(B). In particular, Johnston was fined, notwithstanding the fact that he appears to have performed no rank-and-file work. MM&P's memorandum of law concedes that: ''There may also have been charges preferred by members against a handful of management representatives who did not perform bargaining unit work.'' It would appear that, in any event, this fine violates the Board's rule in *Columbia Typographical Union No. 101 (Washington Post)*, supra, and violates Section 8(b)(1)(B).

J. *Job Action and Area Standards Picketing: Revisited*

MTL, Keystone, and MOC challenge the rationale of the earlier MM&P decisions and their emphasis on MM&P's objective intent. They contend that intent is irrelevant in determining whether Section 8(b)(1)(B) has been violated. The only statutorily protected right is the employer's right to be free from restraint or coercion in selecting its grievance-adjusters and however, with what objective, the restraint occurs, makes no difference. That would appear to be the rule in the union discipline cases; the only question there is

[90] Respondent argues that one of the Companies agreed to pay the fines, if any. However, that obligation would put pressure directly on the Companies to determine whether to pay for an officer's labors twice or three times the wages (the wages, plus the fine) or to terminate the officer's employment. The Companies walked away from MM&P in order to become competitive by reducing their costs. Probabilities indicate that the Companies would prefer to save the money.

[91] MM&P's memorandum of law contends that the tendered resignations were viewed by MM&P in a ''dual light.'' First, it feared that the acceptance of the resignation would foreclose its ability to proceed against the member in a disciplinary hearing. Not only do I find no rationale in the record for this statement but also I find the contention unreal. Second, it ''acknowledged that the tendering of a resignation cut off continued liability for acts committed after the tender.'' But it never did. All that is in the record is Lowen's opinion that: ''any action [the member] takes after his notice of resignation, clearly no one can try him for.'' But MM&P did, and Martin never told the members that they were absolved from responsibility after the date of their resignations. There are at least five trial proceedings, attended by MM&P representatives as ''charging officers'' and MM&P attorneys, at which members (Hoglund, Reichhelm, Welch, Wood, and Vafiades) were fined for periods after they had attempted to resign.

[92] That MM&P may never return to its former status of a collective-bargaining representative on the Companies' vessels or that the licensed deck officers are grievance adjusters only with respect to employees represented by unions other than MM&P makes no difference. Id. at 437–438 fn. 37.

whether there was a restraint. If disciplinary action against a supervisor is only indirect pressure on the employer and coercion is illegal regardless of the union's intent, then coercion aimed directly at the employer, which should be subject to lesser restrictions, should be illegal regardless of intent.

As noted above, in *Florida Power & Light*, the violation of Section 8(b)(1)(B) occurs only when the discipline may adversely affect the supervisor's conduct in performing the duties of or acting in the capacity of grievance adjuster. In *ABC*, the Court approved of the Board's inquiry into whether the discipline may adversely affect the supervisor's performance ''and thereby coerce or restrain the employer contrary to Section 8(b)(1)(B).'' 437 U.S. at 430. The focus in both decisions was on the tendency of the discipline to cause the desired effect, and prompted Justice Stewart to complain in dissent that ''the Court's decision prevents a union with supervisory members from effectively calling and enforcing a strike.'' 437 U.S. at 441. To that he added footnote 3, anticipating this proceeding:

> Under this rule, it would appear that a separate union consisting entirely of supervisory employees would commit an unfair labor practice if it ordered its members not to cross the picket lines of another union, or indeed, if it called an economic strike entirely on its own, since the employer would thereby be deprived of the services of his chosen grievance-adjustment representatives. [Emphasis added.][93]

Although the Board did not in its four prior decisions involving MM&P delineate the ''effects'' analysis, it clearly did so in the union fine cases, including the initial proceeding in *ABC*, sub nom. *Writers Guild of America (American Broadcasting)*, 217 NLRB 957 (1975), as well as *Chicago Typographical Union No. 16 (Hammond Publishers)*, 216 NLRB 903 (1975), enfd. 539 F.2d 242 (D.C. Cir. 1976); *Typographical Union Local 6 (Daily Racing Form)*, 216 NLRB 896 (1975); *Carpenters (Skippy Enterprises)*, supra; and *Sheet Metal Workers Local 85 (Suburban Sheet Metal)*, 273 NLRB 523 (1984). In one picketing case, the Board avoided the union's object and limited itself solely to the issue of whether the union's conduct tended to interfere with the employer's right to choose freely his grievance representative. *International Typographical Union (American Newspaper)*, 86 NLRB 951, 958–959 (1949), enfd. sub nom. *ANPA v. NLRB*, 193 F.2d 782, 805 (7th Cir. 1951), cert. denied 344 U.S. 812 (1952); see also *Meat Cutters Union Local 81 v. NLRB*, 458 F.2d 794, 801 fn. 20 (D.C. Cir. 1972).

As shown above, MM&P's job action directly caused many licensed deck officers to leave their jobs. By consequence, under the effects rationale, the job action violated Section 8(b)(1)(B). The area standards picketing also violated the Act, but an analysis of it also demonstrates that an area standards defense should not even be permitted to MM&P. ''Area standards picketing is engaged in by a union to protect the employment standards it has successfully negotiated in a particular geographic area from the unfair competitive advantage that would be enjoyed by an employer whose labor cost package was less than those of employers subjected to the area contract standards.'' *Giant Food Markets*, 241 NLRB 727, 728 (1979), citing *Sales Delivery Drivers Local 296 (Alpha Beta Acme Markets)*, 205 NLRB 462 (1973). The picketing is protected under Section 7 of the Act as a right of employees to protect advancements that they have made and has been applied by the Board in two particular instances to make legal picketing which otherwise would be found illegal: to show that the real objective of the picketing was not union recognition or bargaining under Section 8(b)(4)(C), *Hod Carriers Local 41 (Calumet Contractors)*, 133 NLRB 512 (1961), or under Section 8(b)(7)(C), *Houston Building Trades Council (Claude Everett Construction)*, 136 NLRB 321 (1962).

There is no such protected right for supervisors. The only statutory right herein is the employer's right under Section 8(b)(1)(B) to be free from restraint or coercion in selecting its grievance adjusters. Unlike Section 8(b)(4)(C) and (7)(C), where a violation depends on the object of the union's picketing, a violation of Section 8(b)(1)(B) would not appear to be contingent on the union's object. For example, object or intent is irrelevant in determining whether the employees' Section 7 right to bargain collectively through representatives of their own choosing has been violated. *American Freightways Co.*, 124 NLRB 146, 147 (1959); *Cooper Thermometer Co.*, 154 NLRB 502, 503 fn. 2 (1965). It would therefore follow that object should be irrelevant in determining whether the employer's ''correlative'' right to select its bargaining representative has been violated. *Meat Cutters Union Local 81 v. NLRB*, 458 F.2d 794, 798 fn. 10 (D.C. Cir. 1972). That appears to be the basis of the Board's decision in *Chicago Typographical Union 16 (Hammond Publishers)*, supra, a union fine case, where the majority disposed of the minority's ''motivational type analysis,'' 216 NLRB at 903 fn. 5, finding that only the adverse effects of the discipline on the supervisor's performance of his 8(b)(1)(B) duties are important.

Accordingly, I agree that the effects of MM&P's actions are of prime concern and that any activity, including picketing by MM&P—as long as it remains a labor organization subject to the Act—is illegal because a logical and foreseeable effect must be that its lines will be honored. *Electrical Workers IBEW Local 46 (PAC, Inc.)*, 273 NLRB 1357 (1985). That is the reason for its picketing and the reason for MM&P's appeals to the AFL–CIO and other unions, the picketing of MEBA, and the picketing by MM&P's picket boats—to hurt the Companies. The very nature of the tanker industry may have contributed to the Companies' success in continuing their operations since 3 October. The tankers are loaded and unloaded at separate docks and at anchorages away from the docks. The success or failure of those operations is not affected by the participation of MM&P'S parent, the ILA, and its member-longshoremen.[94] It is affected by access to pilots, tugboats, some longshore services, as well as the unions representing other crewmembers, should they reverse their positions and honor MM&P's picket lines. Any such effect must be enjoined to effectuate the policies of Section 8(b)(1)(B) of the Act.

[93] I respectfully disagree in part. If MM&P were a union which consisted solely of supervisors, it would not be subject to Sec. 8(b) of the Act because, definitionally, it would not be a ''labor organization.''

[94] MOC was forced to lay up the Overseas Marilyn, a dry cargo carrier, because it was likely that the ILA would honor MM&P's picket line; and the vessel wollld not be loaded or unloaded.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of MM&P set forth in section II, above, occurring in connection with the operations of the Companies described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening commerce and the free flow of commerce.

THE REMEDY

Having found that MM&P has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (B) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. In particular, I shall order the rescission of all the internal union disciplinary proceedings, including charges and fines, taken against licensed deck officers and other personnel of or pilots performing services for the Companies and shall order that any fines paid be refunded, with interest, and that all travel or other expenses incurred in attending and resisting the internal proceedings be reimbursed. *Laborers Northern California District Council (Baker Co.)*, 275 NLRB 278 (1985). Because I have found an 8(b)(1)(B) restraint against the Companies by charging and fining their supervisors, the Companies are similarly entitled to be reimbursed their expenses in employing counsel to defend their supervisors. These are expenses incurred which would not have been incurred had MM&P not violated the Act. Interest shall be computed as provided in *Florida Steel Corp.*, 231 NLRB 651 (1977).[95] In addition, in *Cove Tankers*, the Board issued a broad order ''[i]n view of [MM&P's] demonstrated proclivity to engage in conduct violative of Section 8(b)(1)(B).'' 233 NLRB at 251. See also *Newport Tankers*, 240 NLRB 1240 (1979). I shall do the same with respect to the violations of Section 8(b)(1)(B).[96] However, MM&P's threats of violence and harassment appear to be new in its arsenal, and its violations of Section 8(b)(1)(A) are not sufficiently severe or widespread to warrant a broad order under that section.

Counsel for the General Counsel and MTL, Keystone, and MOC have requested that the recommended Order should be published in MM&P's official newspaper. I shall recommend this relief, too. The normal posting of the notice may be insufficient to advise all of MM&P's members of the relief granted here, especially because MM&P's members are frequently employed at sea for periods of time well in excess of the usual 60-day notice posting period. See also *Electrical Workers IBEW Local 3 (Northern Telecom)*, 265 NLRB 213 (1982). I shall not, however, recommend the Companies' requested relief of an order barring MM&P's refusal to accept the resignations of licensed deck officers and prohibiting MM&P from instructing various fringe benefit plans not to grant benefits to licensed deck officers. Neither was the subject of the unfair labor practice complaint and the second item was not fully litigated. As to the first, the ban on resignations from a labor organization is a subject of Section 8(b)(1)(A), which protects statutory employees, not supervisors.

[Recommended Order[97] omitted from publication.]

[95] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[96] In light of my conclusion that all MM&P's picketing, no matter for what purpose, violated the Act, I reject MM&P's contention that its conduct has been purged and corrected by reason of the 10(j) injunction.

[97] Counsel for the General Counsel moved at trial and in a supplemental motion to correct the official transcript in numerous respects. There being no opposition, the transcript is hereby amended. The supplemental motion is received in evidence as G.C. Exh. 259-B.